TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 177.

JOHN M. LONGYEAR, PLAINTIFF IN ERROR,

vs.

WILLIAM TOOLAN AND ALEXANDER McMILLAN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

FILED DECEMBER 26, 1906.

(20,497.)

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a JOHN M. LONGYEAR, Plaintiff in Error,

vs.

WILLIAM TOOLAN and ALEXANDER MCMILLAN, Defendants in Error.

Record.

1 WILLIAM TOOLAN and ALEXANDER MCMILLAN, Plaintiffs and Appellees,

vs.

JOHN M. LONGYEAR and JAMES MONROE, Defendants and Appellants.

Ejectment.

STATE OF MICHIGAN, *County of Clinton, ss:*

The Circuit Court for the County of Clinton.

William Toolan and Alexander McMillan, by Thomas & Collingwood, their attorneys, come into court according to the form of the statute in such case made and provided, and filing this declaration and entering rule to plead as commencement of suit, complain of James Monroe of Portland, and John M. Longyear of Marquette, defendants in this suit.

For that whereas the said plaintiffs heretofore, to wit, on the first day of November, 1896, were possessed of certain real estate and premises, with appurtenances, situate in the township of Eagle, in the county of Clinton and State of Michigan, known and described as follows, to wit: the east half of the northeast quarter of section seven (7), town five (5) north, range four (4) west, which said premises the said plaintiffs claim in fee, and the said plaintiffs being so possessed thereof, the said defendants, afterwards, to wit, on the said first day of November, 1896, entered into the said premises and ejected the said plaintiffs therefrom, and unlawfully with-old from said plaintiffs the possession thereof, to the damage of the said plaintiffs one thousand dollars, and therefore bring suit.

Dated Nov. 28, 1896.

THOMAS & COLLINGWOOD,
Attorneys for Plaintiffs, Lansing, Mich.

2 STATE OF MICHIGAN:

The Circuit Court for the County of Clinton.

WILLIAM TOOLAN and ALEXANDER MCMILLAN, Plaintiffs,

vs.

JAMES MONROE and JOHN M. LONGYEAR, Defendants.

DECEMBER 17, 1896.

Now come the said defendants, by Cahill & Ostrander, their attorneys, and demand a trial of the matters set forth in the plaintiffs' declaration.

CAHILL & OSTRANDER,
Attorneys for Defendants.

JUNE 22ND, A. D. 1903.

Present: Hon. Geo. P. Stone, Circuit Judge.
Court was opened for business in due form.

WILLIAM TOOLAN and ALEXANDER MCMILLAN
vs.
JAMES MONROE and JOHN M. LONGYEAR.

Trial by Court.

In this cause, the parties being in court by their respective attorneys, ready for trial, and the same having *been* duly come on for trial before the court, without a jury, and the court having heard the proofs and allegations of the parties and the arguments of the counsel, took the case under consideration.

Thereupon the court adjourned until Tuesday, June 23rd A. D. 1903, at nine o'clock a. m.

GEO. P. STONE,
Circuit Judge.

3 STATE OF MICHIGAN:

The Circuit Court for the County of Clinton.

WILLIAM TOOLAN and ALEXANDER MCMILLAN, Plaintiffs,
vs.
JAMES MONROE and JOHN M. LONGYEAR, Defendants.

Ejectment.

Requests for Findings of Fact and Law.

Now come the said defendants by Cahill & Wood, their attorneys, and request the court for a written finding of the facts and law in this case, and particularly,

The court is requested to find as a fact that in the proceedings in the circuit court for the county of Clinton, leading up to a decree for the sale of the land in question, for the taxes of 1891, made and entered in 1893, and also in the like proceedings leading up to a decree for a sale of said lands, for the taxes of 1892 made and entered in 1894, no personal service of process was made or attempted to be made upon the defendants or either of them, although both said defendants were at the time residents of this state, but the said proceedings were based in each year upon that provision of section 66 of the general tax law of 1893 as amended, which provides as follows:

"The publication of the order and petition aforesaid shall be equivalent to a personal service of notice on all persons who are interested in the lands specified in such petition, of the filing thereof, of all proceedings thereon and of the sale of the lands under the decree, and shall give the court jurisdiction to hear such petition, determine

all questions arising thereon, and to decree a sale of such lands for the payment of all taxes, interest and charges thereon."

The court is requested to find as a matter of law that the said decree entered in 1893 for the taxes of 1891, and the decree entered in 1894 for the taxes of 1892 and the sales of said land made in pursuance thereof are each of them void and of no effect for lack of personal service of process upon the owner of the land, and because the provisions of section 66 of the general tax law of 1893 as amended which makes the publication of the order and petition equivalent to a personal service of process or notice upon the owner of the lands is void, for the reason that it deprives the citizen of his property without due process of law, and is therefore in violation of the 14th amendment to the constitution of the United States, which provides among other things, as follows:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

CAHILL & WOOD,
Defendants' Attorneys.

4 STATE OF MICHIGAN, *County of Clinton, ss:*

In the Circuit Court of Clinton County.

WILLIAM TOOLAN ET AL., Plaintiffs,
vs.
JOHN M. LONGYEAR ET AL., Defendants.

Ejectment.

Opinion of the Court.

The plaintiffs claim the land in question by virtue of two tax deeds for the taxes of 1891 and 1892. The lands were sold under decrees of this court made in 1893 and 1894 for the delinquent taxes aforesaid. At the tax sale in 1893 the lands were bid in to the state for the tax of 1891, and were thus held by the state at the time they were included in the auditor general's petition for decree against the lands for the tax of 1892, and so remained in the state until conveyed to the plaintiffs on September 6th, 1895 by the tax deed for the tax of 1891.

At the time of the commencement of this suit James Monroe was in possession of the lands as the tenant of defendant John M. Longyear, and defendant Longyear claimed title to the lands as the owner of the original title.

The foregoing facts appear by stipulation of the parties made and filed herein, and the remaining facts are shown by documentary

evidence introduced at the hearing, and the contention in this court is wholly upon the questions of law.

1st. I find the including of seventy cents in the tax against each parcel for the cost of advertising, the same being in excess of the actual cost of such advertising, does not affect plaintiff's title or right of recovery in this case.

2nd. I find that the statute providing for a decree and sale of land for delinquent taxes without personal service of process upon the owner of the land and the provision which makes publication equivalent to personal service are not in contravention of the fourteenth amendment of the constitution of the United States.

3rd. I find that the allegations contained in the auditor general's publication in 1894 gave the court jurisdiction to proceed to a decree; and that the fact that the land in question was then held by the state under a sale for the tax of a previous year is a defense that should have been made at the hearing of the petition, and it is not open to the plaintiffs in this collateral proceeding.

4th. I find that the affidavit of publication contained in the proceedings of 1894, had to foreclose upon the tax of 1892, is in substantial compliance with the statute, and gives the court jurisdiction to proceed to a decree.

5th. I find it is unnecessary to pass upon the validity of sufficiency of the affidavit of publication contained in the proceedings of 1893, had to foreclose upon the tax of 1891.

6th. I find that all other objections of the defendants, not herein specifically mentioned, are foreclosed by the decrees of this court made in the tax proceedings aforesaid.

A judgment may be entered herein in favor of the plaintiffs and against the defendants.

GEO. P. STONE,
Circuit Judge.

STATE OF MICHIGAN, *County of Clinton, ss:*

In the Circuit Court of Clinton County.

WILLIAM TOOLAN and ALEXANDER MCMILLAN, Plaintiffs,
vs.
JAMES MONROE and JOHN M. LONGYEAR, Defendants.

Ejectment.

The defendants by their counsel, having requested this court for written findings of facts and law in this case, and particularly for a finding on the fact of the service of process in the tax proceeding and a finding of law based thereon, the court says in relation thereto that it has heretofore made and found written findings of fact and law in this case, but in reference to the findings particularly requested does find upon the question of fact as particularly requested in the annexed request, that the said facts are true, and the

court does find them to be true in the words and language as particularly requested in the said annexed request.

And the court further says in relation to the finding of law as herein requested and requested in the annexed request that said request is refused.

Dated November 28th, 1903.

GEO. P. STONE,
Circuit Judge.

6 STATE OF MICHIGAN:

The Circuit Court for the County of Clinton.

WILLIAM TOOLAN and ALEXANDER MCMILLAN, Plaintiffs,
vs.
JAMES MONROE and JOHN M. LONGYEAR, Defendants.

In this cause on reading and filing the annexed stipulation made and entered into between the parties to said cause, it is ordered that the defendants have thirty days from and after the entry of this order in which to allege exceptions to the findings of the court, and in which to settle a bill of exceptions, or to move for a new trial.

Dated this 12th day of December, 1903.

GEO. P. STONE,
Circuit Judge.

STATE OF MICHIGAN:

Circuit Court for the County of Clinton.

WILLIAM TOOLAN and ALEXANDER MCMILLAN, Plaintiffs,
vs.
JAMES MONROE and JOHN M. LONGYEAR, Defendants.

In this cause, notice having this day been received by counsel for plaintiffs and defendants, that judgment has been entered in favor of plaintiffs in said cause, therefore it is stipulated that an order may be entered in this cause allowing the defendants thirty days from the entry of said order within which to allege exceptions to the matters of law embodied in the findings of the court, and also to settle a bill of exceptions, or to move for a new trial.

Dated Dec. 9, 1903.

THOMAS, CUMMINS & NICHOLS,
Plaintiffs' Attorneys.
CAHILL & WOOD, *Defendants' Attorneys.*

7 STATE OF MICHIGAN:

In the Circuit Court for the County of Clinton.

WILLIAM TOOLAN and ALEXANDER MCMILLAN, Plaintiffs,
vs.
JOHN M. LONGYEAR and JAMES MONROE, Defendants.

Ejectment.

Now come the said defendants, by Cahill & Wood, their attorneys, and allege the following exception to the matters of law embodied in the findings and amended findings of the circuit judge, heretofore filed in said cause.

1. The defendants except to the first conclusion of law, viz.: that the including of 70 cents in the tax against each parcel of land for cost of advertising, the same being in excess of the actual cost of such advertising, does not affect plaintiff's title or right of recovery in this case.

2. The defendants except to the finding that the statute providing for a decree and sale of lands for delinquent taxes without personal service of process upon the owner of the land, and the provision which makes publication equivalent to personal service are not in contravention of the 14th amendment to the constitution of the United States.

3. The defendants except to the finding that the allegations contained in the auditor general's publication in 1894 gave the court jurisdiction to proceed to a decree and that the fact that the land in question was then held by the state under a sale for a tax of a previous year is a defense that should have been made at the hearing of the petition, and it is not open to the defendants in this collateral proceeding.

4. The defendants except to the finding that the affidavit of publication contained in the proceedings of 1894 had to foreclose upon the tax of 1892 is in substantial compliance with the statute and gave the court jurisdiction to proceed to a decree.

5. The defendants except to the refusal of the court to pass upon the validity or sufficiency of the affidavit of publication contained in the proceedings of 1893 had to foreclose upon the tax of 1891.

6. The defendants except to the finding that all other objections of the defendants not herein specifically mentioned are foreclosed by the decrees of this court made in the tax proceedings aforesaid.

7. The defendants except to the judgment entered for the plaintiffs because the facts found do not support the judgment.

Dated Dec. 30, 1903.

CAHILL & WOOD,
Defendants' Attorneys.

8 TUESDAY, *October 29th, A. D.* 1903.

Present: Hon. Geo. P. Stone, Circuit Judge.
Court was opened for business in due form.

WILLIAM TOOLAN and ALEXANDER MCMILLAN.
vs.
JAMES MONROE and JOHN M. LONGYEAR.

Judgment for Plaintiff in Ejectment.

This cause having heretofore come on for trial before the court without a jury, and the court having heard the proofs and allegations of the parties and the arguments of the counsel, and having carefully considered the same, finds that the said defendants are guilty of unlawfully withholding from the said plaintiffs the premises described in their said declaration in this cause, as, the east half of the northeast quarter of section seven (7), town five (5) north, range four (4) west; and that the said plaintiffs are well entitled to hold the same in fee, as the said plaintiffs have in their declaration complained against them, the said defendants, and that the said plaintiffs have sustained damages, on occasion of the premises, over and above their costs and charges by them about their suit in this behalf expended, at the sum of six cents.

Therefore, on motion of Thomas, Cummins & Nichols, attorneys for the plaintiffs, it is ordered and adjudged by the court now here, that the said plaintiffs do recover against the defendants their damages aforesaid together with their costs and charges aforesaid to be taxed, and that the said plaintiffs have execution therefor.

GEO. P. STONE,
Circuit Judge.

9 STATE OF MICHIGAN:

In the Circuit Court for the County of Clinton.

WILLIAM TOOLAN and ALEXANDER MCMILLAN, Plaintiffs,
vs.
JOHN M. LONGYEAR and JAMES MONROE, Defendants.

Ejectment.

Bill of Exceptions.

On the 22nd day of June, 1903, at the court house in the village of St. Johns in said county, the above entitled cause came on for hearing before the Hon. Geo. P. Stone, judge of said court, a jury having been waived by counsel for respective parties, Messrs. Thomas, Cummins & Nichols appearing for the plaintiffs, and Messrs. Cahill & Wood appearing for the defendants.

The plaintiffs, to maintain the issue on their part, introduced the following evidence:

Mr. THOMAS: "This is an ejectment case by Alexander McMillan and William Toolan against John M. Longyear and James Monroe to recover possession of the east half of the northeast quarter of section seven, town five north, range four west. The plaintiff claims title by virtue of two tax deeds in the office of the auditor general of the State of Michigan, for the taxes of 1891 and the taxes of 1892. I want first to offer in evidence a stipulation that was entered into in the former trial of the case.

10 Mr. CAHILL: "Read it into the record."

Mr. THOMAS (reading): "Circuit court for the County of Clinton. William Toolan and Alexander McMillan against John M. Longyear and others. In this case the following facts are agreed to, and this stipulation may be read in evidence on the trial as proof of said facts, but subject to objection of counsel for either party that such evidence is incompetent and immaterial:

"First. At the tax sale in the county of Clinton, commencing on the 4th day of December, 1893, the lands in question were bid off in the name of the state for the taxes of 1891, and were thus held by the state at the time they were included in the auditor general's petition, lists and schedules made and filed in this court, and praying a decree against said lands for the taxes of 1892, together with such other amounts specified in said petition, lists and schedules annexed thereto, and until the same were conveyed to the plaintiffs under the tax deed for the taxes of 1891 of the 6th day of December, 1895."

"I suppose that should be put in by the defense, that part of the stipulation."

It was here admitted by counsel for defendants that the first paragraph of said stipulation was a part of the defense, and should be properly introduced on behalf of defendants, but that if the same should be allowed to stand as read it might be done with the understanding that plaintiffs' counsel objected to the introduction and reading in evidence of the first paragraph of said stipulation as being incompetent and immaterial to show the facts therein stated.

The COURT: "The court will consider the stipulation in evidence as a whole, and that counsel for plaintiffs object to the first clause as being incompetent and immaterial."

(Continuing reading): "Second. At the time of the commencement of this suit, the defendant, James Monroe, was in possession of the lands as the tenant of John M. Longyear, the other defendant, and the said John M. Longyear claimed title to said

11 property as the owner of the original title in fee. Thomas & Collingwood, attorneys for plaintiffs. Cahill & Wood, attorneys for defendant."

Mr. THOMAS: "I want to introduce the enrolled decree of the proceedings taken in the circuit court for Clinton county on the petition of the auditor general for the sale of lands delinquent for the taxes of 1891 which document contains the following papers:

1. Affidavit of publication with copy, order of hearing and petition of auditor general and schedule showing list of lands advertised for sale attached.
2. Affidavit of regularity.
3. Order *pro-confesso.*
4. Decree of court.
5. Report of sale by county treasurer.
6. Certificate of enrollment.

Said papers are hereto annexed as our exhibit marked Exhibit 'B.'"

Mr. CAHILL: "I desire to object for the reasons:

1. That up to this point there has been no evidence of the publication of the petition and order of hearing. The affidavit of publication is insufficient in that it does not show a due publication of the petition and order for four weeks next preceding the day of hearing.

2. That there is no proof that the paper purporting to be an affidavit of publication was made by the person who was designated, or was the publisher of the paper designated by the auditor general to publish the tax sales of that year.

3. That it does not appear from the published lists of lands that there was any dollar mark or other sign or symbol to indicate what the figures set opposite each description of this land mean.

4. Because there is in connection with this record no copy of original petition of the auditor general for the sale of these delinquent taxes for the taxes of 1891.

5. Because it appears by the decree it was not made at least ten days prior to the day appointed for the sale of the land. The decree appearing to have been made on the 25th of Novem-
12 ber, and the sale was appointed to be held on the 4th of December, which was nine days.

6. Because the decree included among other items for which the land was sold '$.70' under the heading 'charges,' and that there is no authority in law for including that amount.

7. That there is no evidence of any personal service of process upon the defendants, or either of them."

Which objections were overruled, and the said record admitted in evidence as plaintiff's Exhibit "B." Exception for defendants.

Mr. THOMAS: "I want next to introduce the tax record for the taxes of 1891, sold on December 4th, for collection of the delinquent taxes of 1891." The land in question appearing as No. 66 on page 12. To which record is attached the original petition of the auditor general, the order of hearing and a certified copy of the decree. In the tax record the figures set opposite to each description of land are separated into columns by lines.

Record received.

Mr. THOMAS: "I offer in evidence a deed from Stanley W. Turner, auditor general for the State of Michigan, to William Toolan and Alexander McMillan, of the land in question for the taxes of 1891."

Mr. CAHILL: "To that I desire to make objection.

1. That the deed does not purport to convey to the plaintiffs a

title in fee to these lands, and is, for that reason, wholly immaterial, the plaintiffs claiming land in their declaration as owners in fee.

2. That there has been no proof made of the regularity of the proceedings prior to the making of said deed."

Which objections were overruled, and the deed admitted in evidence as plaintiff's Exhibit "C." Exception for defendants.

Mr. THOMAS: "I offer in evidence Exhibit 'D,' being the enrolled decree against the delinquent tax payers of Clinton county, for the taxes of 1892, sold at the tax sale of December 30, 1894, which document contains the following papers:

13 1. Affidavit of publication with copy, order of hearing and petition of auditor general and schedule showing list of lands advertised for sale attached.

2. Affidavit of regularity.

3. Order *pro-confesso.*

4. Decree of court.

5. Report of sale by county treasurer.

6. Certificate of enrollment.

Said papers are hereto annexed as our exhibit marked Exhibit 'D.'"

Mr. CAHILL: "We make the same objections to this that were made to the introduction of the enrolled decree for the taxes of 1891, and also the further objection that it now appears that at the time this petition was filed the lands had been bid off to the state for the taxes of 1891, and were then held by the state."

Which objections were overruled and the decree admitted as Exhibit "D." Exception for defendants.

Mr. THOMAS: "I now offer in evidence the tax record for delinquent tax lands for the taxes of 1892, sold on December 3, 1894, and the land in question appearing at No. 42 on page 13." To which record is attached the original petition of the auditor general, the order of hearing and a certified copy of the decree. In the tax record the figures set opposite to each description of land are separated into columns by lines.

Mr. THOMAS: "I offer in evidence Exhibit 'E,' being a deed from Stanley W. Turner, auditor general of the State of Michigan, to William Toolan and Alexander McMillan, of the land in question, sold for the taxes assessed thereon in the year 1892."

Mr. CAHILL: "Same objections to the introduction of that deed as were made to the introduction of the deed for the taxes of 1891."

Objections were overruled. Exception for defendants.

Plaintiffs also called as a witness Alexander McMillan who, being sworn, testified that he was one of the plaintiffs in this suit,

14 shown Exhibit "C," which is the tax deed for the taxes of 1891. Witness testified that he paid to the auditor general for the State of Michigan, for that deed, $31.74, being shown Exhibit "E," which is the auditor general's deed for the land in question for taxes of 1892. He testified that he paid to the auditor general for that deed, $40.03; that such payments were required of him at the time he received the deeds.

Whereupon the plaintiffs rested their case, and the defendants rested their case.

EXHIBIT B.

1.

Affidavit of Publication.

Which reads as follows:

STATE OF MICHIGAN, *County of Clinton, ss:*

Coleman C. Vaughan, being duly sworn, deposes and says that he is the publisher of the "Clinton Republican," a newspaper printed, published and circulated in the County of Clinton, and that the annexed notice has been duly published in said paper at least once each week for four (5 publications) successive weeks, and that the first publication thereof was on the 12th day of October, A. D. 1893.

(Signed) C. C. VAUGHAN.

Sworn and subscribed to before me this 9th day of Nov., A. D. 1893.

(Signed) J. W. FITZGERALD,
Notary Public for Clinton County, Mich.

Attached to said affidavit is a printed paper cut from a newspaper, headed

15 "Legal.

Annual Tax Sale.

STATE OF MICHIGAN, *County of Clinton, ss:*

The Circuit Court for the County of Clinton, in Chancery.

In the Matter of the Petition of the State of Michigan for the Sale of Certain Lands for Taxes Assessed Thereon.

On reading and filing the petition of the auditor general of the state of Michigan, praying for a decree in favor of the state of Michigan, against each parcel of land therein described, for the amounts therein specified, claimed to be due for taxes, interest and charges on each such parcel of land, and that such lands be sold for the amounts so claimed by the state of Michigan.

It is ordered that said petition will be brought on for hearing and decree at the November term of this court to be held at St. Johns, in the county of Clinton, state of Michigan, on the 13th day of November, A. D. 1893, at the opening of court on that day, and that all persons interested in such lands or any part thereof, desiring to contest the lien claimed thereon by the state of Michigan, for such taxes, interest and charges, or any part thereof, shall appear in said court and file with the clerk thereof, acting as register in chancery,

their objections thereto, on or before the first day of the term of this court above mentioned, and that in default thereof the same will be taken as confessed and a decree will be taken and entered as prayed for in said petition. And it is further ordered, that in pursuance of said decree, the lands described in said petition for which a decree of sale shall be made, will be sold for the several taxes, interest and charges thereon, as determined by such decree, on the first Monday in December thereafter, or on the day or days subsequent
16 thereto as may be necessary to complete the sale of said list and of each and every parcel thereof, at the office of the county treasurer, or at such convenient place as shall be selected by him at the county seat of the county of Clinton, state of Michigan.

Witness, the Hon. S. B. Daboll, circuit judge, and the seal of said circuit court of Clinton county, this 5th day of September, A. D. 1893.

S. B. DABOLL,
Circuit Judge.

Countersigned:
[SEAL.] GEO. H. MARSHALL, *Register.*

State of Michigan to the Circuit Court for the County of Clinton, in Chancery:

The petition of Stanley W. Turner, auditor general of said state of Michigan, respectfully shows that the list of lands here*here*inafter set forth and marked "Schedule —," contains a description of all lands in said county of Clinton upon which taxes were assessed for the years mentioned therein, and which were returned as delinquent for non-payment of taxes, and which taxes have not been paid; together with the total amount of such taxes, with interest computed thereon to the time fixed for sale, and collection fee as provided by law, and the cost of advertising and other expenses of sale of each of said parcels of land.

Your petitioner further shows to the court that said lands were returned to the auditor general under the provisions of section 123 of act 206 of the public acts of 1893, as delinquent for non-payment of taxes, for said years respectively, except such of the taxes set forth in said schedule as have been previously returned and remain unpaid; and that said taxes were returned to the treasurer of
17 said county by the several township treasurers and the city and village collectors, prior to the 12th day of June, 1892, as delinquent.

Your petitioner further shows and avers that the taxes, interest, collection fee and cost of advertising and other expenses of sale, and the legal fees for personal service of subpœna in each case where such personal service is actually made, are a valid lien on the several parcels of land described in said schedule.

Your petitioner further shows that the said taxes on said described lands have remained unpaid for more than one year from and after the date of their return to the county treasurer of said county of Clinton under the provisions of act number two hundred of the public

acts of 1891, or under the provisions of the several tax laws under which any of such taxes were previously returned, and for more than one year prior to the first day of May, 1893; and the said taxes not having been paid, and the same being now due and remaining unpaid as above set forth, your petitioner prays a decree in favor of the state of Michigan against each parcel of said lands, for the payment of the several amounts of taxes, interest, collection fee, cost of advertising and other expenses of sale, as computed and extended in said schedule, against the several parcels of land contained therein, and in addition thereto for the amount of legal fees for personal service of subpœna in each case where such service is actually made, for taxes of such years prior to 1891, as are included herein and upon which such fees accrued in accordance with law; and in default of payment of the said several sums computed and extended against said lands, that each of said parcels of land may be sold for the amounts due thereon, as provided by law, to pay the lien as aforesaid.

And your petitioner will ever pray, etc.

Dated September 5th, 1893.

STANLEY W. TURNER,
Auditor General.

SCHEDULE A.

Taxes of 1891.

Town 5 North of Range 4 West.

	Sec.	Acres.	100ths.	Am't of taxes.	Int.	Col. fee.	Ch'gs.	Total.
E. ½ of N. E. ¼...	7	80	.....	23 00	3 22	92	70	27 84

Schedule A contains a list of lands in other townships, cities and villages, but only the land in question is shown here.

The enrolled record contains the original order made by S. B. Daboll, circuit judge, dated the 5th day of September, 1893, fixing the day of hearing, a copy of which in form and substance is shown in the printed slip attached to the affidavit of publication shown herein, but the petition of the auditor general, a copy of which is attached to the affidavit of publication, does not accompany the order of the circuit judge. There is a blank petition, but it is neither signed nor dated, nor does it indicate to what county it refers.

18 *Affidavit of Regularity.*

The Circuit Court for the County of Clinton, in Chancery.

IN THE MATTER OF THE PETITION OF THE AUDITOR GENERAL OF THE STATE OF MICHIGAN, Complainant,

vs.

THE SEVERAL DELINQUENT TAX PAYERS OF THE COUNTY OF CLINTON, Defendants.

STATE OF MICHIGAN, *County of Clinton, ss:*

W. A. Norton, solicitor for the complainant in the above entitled cause, being duly sworn, doth depose and say, that the said petition was filed with the register of this court on the — day of ——, 1893, for the purpose of collecting the several taxes assessed against the various pieces or parcels of land described in said petition together with the interest, costs and charges thereon by sale of the said land for the payment thereof respectively; that the said petition has been taken as confessed by the said defendants except as to the said several parcels designated in said petitions by the marginal numbers 43 and 73, with reference to which objections have been filed with the register of this court, as provided by the statute, and that all the proceedings to take said petition as confessed have been regular and according to the rules and practices of this court.

W. A. NORTON.

Sworn to and subscribed before me this 13th day of November, 1893.

W. F. WEIMER,
Notary Public.

Order Pro-Confesso.

STATE OF MICHIGAN:

The Circuit Court for the County of Clinton, in Chancery.

Dated November 13, 1893.

IN THE MATTER OF THE PETITION OF THE AUDITOR GENERAL OF THE STATE OF MICHIGAN, Complainant,

vs.

THE SEVERAL DELINQUENT TAX PAYERS OF THE COUNTY OF CLINTON, MICHIGAN, Defendants.

On filing due proof the service of the subpœna issued in this cause on the defendants therein by publication on or before the return day thereof, and more than 20 days having elapsed since said return day, said defendants not having appeared, on motion of W. A. Norton, solicitor for the complainant, it is ordered: that the petition filed in

this cause be, and the same is hereby taken as confessed by the said defendants, except in the several cases designated in the said petition by the marginal numbers 43 and 73. And on like motion ordered that the proofs herein on the part of complainant be taken in open court.

(Signed) GEORGE H. MARSHALL,
Register in Chancery.
W. A. NORTON,
Solicitor for Complainant.

19 STATE OF MICHIGAN:

The Circuit Court for the County of Clinton, in Chancery.

IN THE MATTER OF THE PETITION OF THE AUDITOR GENERAL OF THE STATE OF MICHIGAN
vs.
THE SEVERAL DELINQUENT TAX PAYERS OF CLINTON COUNTY, MICHIGAN.

At a session of said court held at the court house, in the village of St. Johns, in said county, on the 25th day of November A. D. 1893.
Present: Hon. S. B. Daboll, circuit judge.

In the Matter of the Petition of the State of Michigan for the Sale of Certain Lands for Taxes Assessed Thereon.

The said petition and the matters therein stated and the objections filed to certain taxes therein claimed, came on to be heard, and the proof of the due publication of notice of hearing of such petition having been made and filed, and after hearing all parties interested therein:

It is ordered, adjudged and decreed that the amount of taxes, interest, collection fees and charges set down in the column headed "amount decreed against lands," in the tax record, of which such petition forms a part, are valid, and decree is made in favor of the state of Michigan therefor against each parcel of said land for the amount set down in said column opposite to such parcel. It is further ordered, adjudged and decreed that said several parcels of land, or such interest therein as may be necessary to satisfy the amount herein decreed against the same, shall be severally sold, as the law directs. It is further adjudged and decreed that the several special orders made by this court, and entered on such tax record, are made a part hereof, with the same effect as if entered herein.

S. B. DABOLL,
Circuit Judge.

Countersigned:
GEORGE H. MARSHALL, *Register.*
Page 13 tax sale book.

20 (277.) 12-93-300

STATE OF MICHIGAN, *County of Clinton, ss:*

The Circuit Court for the County of Clinton, in Chancery.

In the Matter of the Petition of the State of Michigan for the Sale of Certain Lands for Taxes Assessed Thereon.

In the above entitled cause, decree of sale having on the twenty-fifth day of November, 1893, been entered against certain lands described in said petition in the tax record for December, 1893, being therein numbered 1 to 152 inclusive, in "Schedule A" of said tax record, except numbers 2, 10, 11, 13, 17, 18, 19, 21, 22, 24, 25, 27, 29, 30, 31, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 50, 52, 53, 55, 58, 59, 61, 62, 65, 68, 69, 70, 73, 74, 76, 77, 79, 81, 83, 84, 86, 87, 88, 103, 104, 105, 106, 107, 108, 117, 118, 120, 121, 122, 125, 132, 134, 135, 138, 139, 140, 141, 142, 144, 147, 148, 152.

I, Wm. H. Rose, county treasurer of said county of Clinton, hereby certify that on the fourth (4th) day of December, 1893, and on the succeeding days as was necessary to complete said sale as ordered and decreed, and before the twenty-fifth (25th) day of December, 1893, I did sell to sundry persons designated in said tax record, certain lands therein described, reference being hereby made to said tax record for a more particular description of the lands so sold, and for the names and addresses of the individuals to whom such sales were made. I further certify that at the aforesaid sale I did bid to the state of Michigan certain lands described in said tax record, which said lands so bid to the state of Michigan are marked "state" in the proper column of said tax record, and comprise all of the lands included in the decree of sale made and entered in the above entitled cause which were not sold to the individuals designated as purchasers in the said tax record, except such lands as were withheld from sale in accordance with law, as appears by said tax record, to which reference is hereby made for the particulars of all sales made and acts done in accordance with the decree entered against said lands in the above entitled cause.

Dated this eleventh day of December, 1893.

WM. H. ROSE,
County Treasurer.

Filed in the office of the clerk of the circuit court for Clinton county, this 11th day of December, 1893.

GEORGE H. MARSHALL,
Clerk of Court.

21 EXHIBIT "C."

(No. 221.) "16907."

EXHIBIT A.

Our Certificate No. —. State Tax Land Deed.

Emily Langley, Stenographer.

This indenture, made the sixth day of September, in the year of our Lord one thousand eight hundred and ninety-five, between Stanley W. Turner, auditor general of the state of Michigan, of the first part, and William Toolan and Alexander McMillan of Lansing, Mich., of the second part, Witnesseth, That whereas, in pursuance of the provisions of law, the said party of the second part, on the sixth day of September, A. D. 1895, became the purchaser of the rights of the state in and to the following described lands, situate in the county of Clinton in said state, which were bid off to the state for the taxes assessed thereon in the year 1891, to wit, east half of northeast quarter of section seven, town five north, range four west, containing eighty acres, more or less.

And whereas, The said party of the second part obtained certificate from the auditor general for the purchase of the above described lands, according to law, and paid to the state treasurer upon such certificate the sum of thirty one dollars and seventy-four cents, being the amount of purchase money thereof, as provided by law, which certificate has been presented and surrendered to the said auditor general.

Now, therefore, this indenture witnesseth, That the said Stanley W. Turner, auditor general of the said state of Michigan, in the name of the people of said state, and by virtue of the authority vested in him by the laws thereof, in consideration of the premises, and the payment of the purchase money above mentioned, the receipt whereof is hereby confessed and acknowledged, does, by these presents, remise, release and quit-claim, unto the said William Toolan and Alexander McMillan, party of the second part, and to their heirs and assigns forever, all the rights acquired by the state in virtue of the original sale or sales to the state in the premises above described, subject to all the taxes assessed and levied on such land subsequent to the taxes for which the land was bid off in the name of the state as aforesaid.

In testimony whereof, The said Stanley W. Turner, auditor general as aforesaid, has hereunto set his hand and seal, the day and year first above written.

STANLEY W. TURNER. [L. S.]
Auditor General of the State of Michigan.

Signed, sealed and delivered in presence of

C. H. GRIFFEY.
S. G. WEBSTER.

22 STATE OF MICHIGAN, *County of Ingham, ss:*

On this sixth day of September, A. D. 1895, before me, a notary public in and for said county, personally came the above named Stanley W. Turner, auditor general of said state, known to me to be the person who executed the foregoing instrument, and acknowledged the same to be his free act and deed.

JOHN COLE,
Notary Public, Ingham County, Michigan.

EXHIBIT "D."

STATE OF MICHIGAN, *County of Clinton, ss:*

Coleman C. Vaughan, being duly sworn, deposes and says that he is publisher of "The Clinton Republican," a newspaper printed, published and generally circulating in the county of Clinton, and that the annexed notice has been duly published in said paper at least once each week for five successive weeks and that the *the* first publication thereof was on the 11th day of October, A. D. 1894.

COLEMAN C. VAUGHAN.

Sworn and subscribed to before me this 9th day of November, A. D. 1894.

BELLE M. LITTLE,
Notary Public for Clinton County, Michigan.

Printer's Fees, $—.

"Legal.

Annual Tax Sale.

STATE OF MICHIGAN, *County of Clinton, ss:*

The Circuit Court for the County of Clinton, in Chancery.

In the Matter of the Petition of the State of Michigan for the Sale of Certain Lands for Taxes Assessed Thereon.

On reading and filing the petition of the auditor general *general* of the state of Michigan, praying for a decree in favor of the state of Michigan, against each parcel of land therein described, for the amounts therein specified, claimed to be due for taxes, interest and charges on each such parcel of land, and that such lands be
23 sold for the amounts so claimed by the state of Michigan.

It is ordered that said petition will be brought on for hearing and decree at the November term of this court to be held at St. Johns, in the county of Clinton, state of Michigan, on the 12th day of November, A. D. 1894, at the opening of court on that day, and that all persons interested in such lands or any part thereof, desiring to contest the lien claimed thereon by the state of Michigan, for

such taxes, interest and charges, or any part thereof, shall appear in said court and file with the clerk thereof acting as register in chancery, their objections thereto, on or before the first day of the term of this court first above mentioned, and that in default thereof, the same will be taken as confessed and a decree will be taken and entered as prayed for in said petition. And it is further ordered, that in pursuance of said decree the lands described in said petition for which a decree of sale shall be made, will be sold for the several taxes, interest and charges thereon, as determined by such decree, on the first Monday in December thereafter, or on the day or days subsequent thereto as may be necessary to complete the sale of said list and of each and every parcel thereof, at the office of the county treasurer, or at such convenient place as shall be selected by him at the county seat of the county of Clinton, state of Michigan; and that the sale then and there made will be a public sale and each parcel described in the decree shall be separately exposed to sale for the total taxes, interest and charges, and the sale shall be made to the person offering to buy for any given tax and paying the full amount charged against such parcel, and accepting a conveyance of the smallest undivided fee simple interest therein; or if no person will buy for any of said several taxes and pay the balance thereof and take a conveyance of less than the entire thereof, then the whole parcel shall be offered and sold. If any parcel of land cannot be sold for taxes, interest and charges, such parcel shall be passed over for the time being, and shall on the succeeding day, or before the close of the sale, be reoffered; and if, on such second offer, or during such sale, the same cannot be sold for the amount aforesaid, the county treasurer shall bid off the same in the name of the state.

Witness, the Hon. S. B. Daboll, circuit judge, and the seal of said circuit court of Clinton county, this 4th day of September, A. D. 1894.

[SEAL.]

S. B. DABOLL,
Circuit Judge.

Countersigned:
GEORGE H. MARSHALL, *Register.*

24 STATE OF MICHIGAN:

To the Circuit Court for the County of Clinton, in Chancery.

The petition of Stanley W. Turner, auditor general of said state of Michigan, respectfully shows that the list of lands hereinafter set forth and marked "Schedule A," contains a description of all lands in said county of Clinton upon which taxes were assessed for the years mentioned therein, and which were returned as delinquent for non-payment of taxes, and which taxes have not been paid; together with the total amount of such taxes, with interest computed thereon to the time fixed for sale, and collection fee as provided by law, and the cost of advertising and other expenses of sale of each of said parcels of land.

Your petitioner further shows to the court that said lands were returned to the auditor general under the provisions of section 123 of act 206 of the public acts of 1893, as delinquent for non-payment

of said taxes for said years respectively, except such of the taxes set forth in said schedule as were returned to the auditor general prior to the 12th day of June, 1893, and remain unpaid.

Your petitioner further shows and avers that the taxes, interest, collection fee and cost of advertising and other expenses of sale as set forth in said Schedule A, are a valid lien on the several parcels of land described in said schedule.

Your petitioner further shows that the said taxes on said described lands have remained unpaid for more than one year from and after the date of their return to the county treasurer of said county of Clinton under the provisions of act number two hundred of the public acts of 1891, or under the provisions of the several tax laws under which any of such taxes were previously returned, and for more than one year prior to the first day of May, 1894; and the said taxes not having been paid, and the same being now due and remaining unpaid as above set forth, your petitioner prays a decree in favor of the state of Michigan against each parcel of said lands, for the payment of the several amounts of taxes, interest, collection fee, cost of advertising and other expenses of sale, as computed and extended in said schedule, against the several parcels of land contained therein, and in default of payment of the said several sums computed and extended against said lands, that each of said parcels of land may be sold for the amounts due thereon, as provided by law, to pay the lien aforesaid.

And your petitioner will ever pray, etc.

Dated August 29, 1894.

STANLEY W. TURNER,
Auditor General.

25 SCHEDULE A.

Taxes of 1889.

Village of Mapleton.

	Sec.	Acres.	100ths.	Am't of taxes.	Int.	Col. fees.	Ch'gs.	Total.
Lot 21	...	...	...	$0 10	$0 04	...	$0 70	$0 84
Lot 25	...	...	...	10	04	...	70	84
Lot 26	...	...	...	10	04	...	70	84
Lot 27	...	...	...	10	04	...	70	84

Taxes of 1890.

Town 8 North, Range 1 West.

N. 32 acres of W. ½ of N. E. ¼	15	32	...	...	8 97	1 26	36	70	11 29

Taxes of 1892.

Town 5 North, 4 West.

E. ½ of N. E. ¼	7	80	...	...	31 41	4 40	1 26	70	37 77

Affidavit of Non-Appearance.

In the Circuit Court for the County of Clinton, in Chancery.

IN THE MATTER OF THE PETITION OF THE AUDITOR GENERAL OF THE STATE OF MICHIGAN

vs.

THE SEVERAL DELINQUENT TAX PAYERS OF THE COUNTY OF CLINTON, MICHIGAN.

STATE OF MICHIGAN, *County of Clinton, ss:*

W. A. Norton being duly sworn, says that he is solicitor for the complainant; that he has searched the files and records of this court in the register's office, and does not find that an appearance in this cause has been entered by or for the defendants; that he has received no notice of such appearance, and has no reason to believe and does not believe that such appearance has been entered.

W. A. NORTON.

Sworn to and subscribed before me this 10th day of Nov., A. D. 1894.

GEORGE H. MARSHALL,
Notary Public.

26 *Affidavit of Regularity.*

The Circuit Court for the County of Clinton, in Chancery.

IN THE MATTER OF THE PETITION OF THE AUDITOR GENERAL OF THE STATE OF MICHIGAN, Complainant,

vs.

THE SEVERAL DELINQUENT TAX PAYERS OF THE COUNTY OF CLINTON, MICHIGAN, Defendants.

STATE OF MICHIGAN, *County of Clinton, ss:*

W. A. Norton, solicitor for the complainant of the above entitled cause, being duly sworn doth depose and say that the said petition was filed with the register of this court on the 3rd day of September, 1894, for the purpose of collecting the several taxes assessed against the various pieces and parcels of land described in said petition, together with the interest, costs and charges thereon by sale of the said lands for the payment thereof respectively; that the said bill has been taken as confessed by the said defendants, except as to the several parcels designated in said petition by the marginal numbers —— with reference to which objections have been filed with the register of this court as provided by the statute, and that all the proceedings to take said petition as confessed have been regular and according to the rules and practices of this court.

(Signed) W. A. NORTON.

Sworn to and subscribed before me this 10th day of November, 1894.

GEORGE H. MARSHALL,
Notary Public.

Endorsed on the back, "Filed Nov. 10, 1904. George H. Marshall, Register."

Order Pro-Confesso.

STATE OF MICHIGAN:

In the Circuit Court for the County of Clinton, in Chancery.

Dated Nov. 10, 1894.

IN THE MATTER OF THE PETITION OF THE AUDITOR GENERAL OF THE STATE OF MICHIGAN, Complainant,

vs.

THE SEVERAL DELINQUENT TAX PAYERS OF THE COUNTY OF CLINTON, MICHIGAN, Defendants.

On filing due proof of service of the subpœna issued in this cause on the defendants therein by publication on or before the return day thereof, and more than 20 days having elapsed since said return day, said defendants not having appeared, on motion of W. A. Norton, solicitor for the complainant, it is ordered that the petition filed in this cause be and the same is hereby taken as confessed by the said defendant, except in the several cases designated in the said petition by the marginal numbers —— And on like motion, ordered, that the proofs herein on the part of the complainant be taken in open court.

(Signed) GEORGE H. MARSHALL,
Register in Chancery.
W. A. NORTON,
Solicitor for Complainant.

27 STATE OF MICHIGAN:

The Circuit Court for the County of Clinton, in Chancery.

IN THE MATTER OF THE PETITION OF THE AUDITOR GENERAL OF THE STATE OF MICHIGAN

vs.

THE SEVERAL DELINQUENT TAX PAYERS OF CLINTON COUNTY, MICHIGAN.

At a session of said court held at the court house in the village of St. Johns, in said county, on the 19th day of November, 1894.
Present, Hon. S. B. Daboll, circuit judge.

In the Matter of the Petition of the State of Michigan for the Sale of Certain Lands for the Taxes Assessed Thereon.

The said petition and the matter therein stated and the objection filed to certain taxes therein claimed, came on to be heard, and the

proof of the due publication of notice of hearing of such petition having been made and filed, and after hearing all parties interested therein: it is ordered, adjudged and decreed that the amount of taxes, interest and collection fees and charges set down in the column headed "amount decreed against land" in the tax record, of which petition forms a part, are valid, and decree is made in favor of the state of Michigan, therefore, against each parcel of said land for the amount set down in each column opposite to such parcel. It is further ordered, adjudged and decreed, that the several parcels of land, or such interest therein as may be necessary to satisfy the amount therein decreed against the same, shall be severally
28 sold, as the law directs. It is further adjudged and decreed that the several special orders made by this court, and entered on such tax record are made a part thereof with the same effect as if entered herein.

S. B. DABOLL,
Circuit Judge.

Countersigned:
GEORGE H. MARSHALL, *Register.*

Page 14 Tax Sale Book.
(322.) 12-94-400.

Treasurer's Report of Tax Sale Under Section 70, *3tc., Act* 206, *Laws* 1893.

In the first blank line you will enter the date of the decree of sale. If the court has made a later decree or decrees of sale against certain descriptions regarding which objections were filed, you will first write the date of the general (first final) decree and then enter the date of the later decree or decrees in consecutive order.

In the second blank you will enter the word "nine," if the sale has commenced at the hour indicated in the letter of instruction sent you, or if at an hour fixed in the decree, you will fill blank accordingly.

The third blank must be filled with the date of the last day upon which the sale is in progress.

The report should be made and filed as early as the sale can be concluded, and must be within twenty days after Dec. 3, 1894.

29 STATE OF MICHIGAN:

The Circuit Court for the County of Clinton, in Chancery.

In the Matter of the Petition of the State of Michigan for the Sale of Certain Lands for the Taxes Assessed Thereon.

In accordance with the decree entered herein on the nineteenth day of November, 1894, I did, on the third day of December, 1894, said day being the first Monday of December, in said year, at the county treasurer's office in the county aforesaid, at nine o'clock in

the forenoon, commence the sale of the lands mentioned in said decree and the tax record for 1894, against which decree had been entered as above and upon which the amounts charged had not been paid, except such of said lands as were lawfully withheld from sale as appears by said tax record, and did continue such sale from day to day, Sundays and other legal holidays excepted, up to and including the eleventh day of December, 1894, when so much of each of said parcels had been sold as was sufficient to pay such amounts, whereupon said sale was closed. Each parcel described in the decree and tax record against which decree was entered, except the parcels excepted as above, was separately exposed to sale for the total taxes, interest and charges, and, except when otherwise noted in the tax record, sale of such parcel, respectively, was made to the person offering to buy the same for any given tax and paying the full amount charged against such parcel and accepting a conveyance of the smallest undivided fee simple interest therein. No greater interest in any such parcel was sold than was sufficient to pay the amount of the tax or taxes for which the same was sold and the interest and charges thereon included in the decree against the land so sold. In all cases the word "entire" and the word "state" are put in columns 15 and 20, respectively, opposite to certain parcels in said tax record, no person would buy for any of the said several taxes and pay the balance thereof and take a conveyance of less than the entire thereof; and in all such cases, and for that reason, the whole parcel was offered and sold, either to an individual or to the state, in the manner hereinafter stated. In every case where any parcels are marked as bid to the state, such parcels, on the original offering for sale, were passed over for the time being, and were, before the close of such sale reoffered for sale; but the same, respectively, could not be sold for the total amount of taxes, interest and charges, and thereupon, and for that reason, I did bid off the same, respectively, in the name of the state, for the state, county and township in proportion to the taxes, interest and charges due each.

I have entered in the proper columns of the tax record the interest in lands sold, the name and postoffice address of each purchaser opposite each parcel of land sold to an individual, and the word "state" opposite each parcel of land bid off in the name of the state.

I hereby refer to such tax record for the particulars of such sale.

Dated December 12, 1894.

WM. H. ROSE,
County Treasurer.

Received and filed, December 12, 1894.

GEORGE H. MARSHALL,
Register of said County.

Certificate of enrollment attached.

31

EXHIBIT "E."

"25156."

Emily Langley, Stenographer.

Our Certificate No. — State Tax Land Deed.

This indenture, made the fourth day of February, in the year of our Lord one thousand eight hundred and ninety-six, between Stanley W. Turner, auditor general of the state of Michigan, of the first part, and William Toolan and Alexander McMillan of Lansing, Mich., of the second part, Witnesseth, that whereas, in pursuance of the provisions of law, the said party of the second part on the sixth day of September, A. D. 1895, became the purchaser of the rights of the state in and to the following described lands, situate in the county of Clinton in said state, which were bid off to the state for the taxes assessed thereon in the year 1892, to wit, east half of northeast quarter of section seven, town five north, range four west, containing eighty acres, more or less.

And whereas, The said party of the second part obtained certificate from the auditor general for the purchase of the above described lands, according to law, and paid to the state treasurer upon such certificate the sum of forty dollars and three cents, being the amount of purchase money thereof, as provided by law, which certificate has been presented and surrendered to the said auditor general.

Now, therefore, this indenture witnesseth, That the said Stanley W. Turner, auditor general of the said state of Michigan, in the name of the people of said state, and by virtue of the authority vested in him by the laws thereof, in consideration of the premises, and the payment of the purchase money above mentioned, the receipt whereof is hereby confessed and acknowledged, does by these presents, remise, release and quit-claim, unto the said William Toolan and Alexander McMillan, party of the second part, and to their heirs and assigns, forever, all the rights acquired by the state in virtue of the original sale or sales to the state in the premises above described, subject to all the taxes assessed and levied on such land subsequent to the taxes for which the land was bid off in the name of the state as aforesaid.

In testimony whereof, the said Stanley W. Turner, auditor general as aforesaid, has hereunto set his hand and seal, the day and year first above written.

STANLEY W. TURNER, [L. S.]
Attorney General of the State of Michigan.

Signed, sealed and delivered in presence of

C. H. GRIFFEY.
S. G. WEBSTER.

STATE OF MICHIGAN, *County of Ingham, ss:*

On this fourth day of February, A. D. 1896, before me, a notary public in and for said county, personally came the above named Stanley W. Turner, auditor general of said state, known to me to be the person who executed the foregoing instrument, and acknowledged the same to be his free act and deed.

JOHN COLE,
Notary Public, Ingham County, Michigan.

32 STATE OF MICHIGAN:

In the Circuit Court for the County of Clinton.

WILLIAM TOOLAN and ALEXANDER MCMILLAN, Plaintiffs,
vs.
JOHN M. LONGYEAR and JAMES MONROE, Defendants.

Ejectment.

Now come the said defendants, by Cahill & Wood, their attorneys, and assign the following errors to the matters of law embodied in the findings and amended findings of the circuit judge, heretofore filed in said cause.

1. That the court erred in the first conclusion of law, viz.: that the including of 70 cents in the tax against each parcel of land for cost of advertising, the same being in excess of the actual cost of such advertising, does not affect plaintiffs' title or right of recovery in this case.

2. That the court erred in finding that the statute providing for a decree and sale of lands for delinquent taxes without personal service of process upon the owner of the land, and the provision which makes publication equivalent to personal service are not in contravention of the 14th amendment to the constitution of the United States.

3. That the court erred in finding that the allegations contained in the auditor general's publication in 1894 gave the court jurisdiction to proceed to a decree and that the fact that the land
33 in question was then held by the state under a sale for a tax of a previous year is a defense that should have been made at the hearing of the petition, and it is not now open to the defendants in this collateral proceeding.

4. That the court erred in finding that the affidavit of publication contained in the proceedings of 1894, had to foreclose upon the tax of 1892, is in substantial compliance with the statute and gave the court jurisdiction to proceed to a decree.

5. That the court erred in refusing to pass upon the validity or sufficiency of the affidavit of publication contained in the proceedings of 1893, had to foreclose upon the tax of 1891.

6. That the court erred in finding that all other objections of the

defendants not herein specifically mentioned are foreclosed by the decrees of this court made in the tax proceedings aforesaid.

7. That the facts found by the circuit judge do not support the judgment.

8. That the court erred in entering judgment for the plaintiffs.

9. That the court erred in overruling the objections of defendants' counsel to the introduction of the enrolled decree for the sale of the land for the delinquent taxes for 1891.

10. That the court erred in overruling the objections of defendants' counsel to the introduction of the enrolled decree for the sale of the land for the delinquent taxes for 1892.

11. That the court erred in overruling the objections of defendants' counsel to the introduction of the tax deed given for the taxes of 1891.

12. That the court erred in overruling the objections of defendants' counsel to the introduction of the tax deed given for the taxes of 1892.

Dated December 20, 1903.

CAHILL & WOOD,
Defendants' Attorneys.

STATE OF MICHIGAN:

The Circuit Court for the County of Clinton.

I do hereby certify that the foregoing correctly sets forth the proceedings had on the trial of the above entitled cause before me, and because the exceptions so taken upon said trial do not appear of record in said cause, this bill of exceptions is settled and signed by the undersigned as circuit judge, and I do further certify that the assignment of errors hereto annexed was annexed at the time of signing said bill of exceptions, and that said bill of exceptions contains all of the testimony in said cause so far as the same has any application to the errors assigned and presented herewith.

Dated the 20th day of January, 1904.

GEO. P. STONE,
Circuit Judge.

34 At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the twelfth day of October in the year of our Lord one thousand nine hundred and five.

Present, the Honorable Joseph B. Moore, Chief Justice. Aaron V. Alray, Claudius B. Grant, Charles A. Blair, Frank A. Hooker, Associate Justices.

20769.

WILLIAM TOOLAN and ALEXANDER MCMILLAN, Plaintiffs,
vs.
JOHN M. LONGYEAR and JAMES MONROE, Defendants and Appellants.

This cause coming on to be heard, is argued by Mr. Nichols for plaintiffs and by Mr. Cahill for defendants and submitted.

STATE OF MICHIGAN, *ss:*

I, Charles C. Hopkins, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said Court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court, at Lansing, this — day of ——, in the year of our Lord one thousand nine hundred and —.

—— ——, *Clerk.*

35 Supreme Court of Michigan.

WILLIAM TOOLAN and ALEXANDER MCMILLAN, Plaintiffs,
vs.
JOHN M. LONGYEAR and JAMES MONROE, Defendants and Appellants.

Opinion.

The trial court directed a verdict for the plaintiffs and the defendants have appealed. The action is ejectment, and the declaration *calims* the premises in fee. The defendants' title is derived from a Federal patent, while that set up by the plaintiffs, rests upon two Auditor General's deeds for the taxes of 1891 and 1892. The lands were bid in to the state and were afterwards purchased by the plaintiffs in 1895. But two assignments of error are discussed by counsel for the defendants and we will consider them only. The questions raised are: (1) Is the tax law constitutional? (2) Did the plaintiffs acquire title in fee, through their tax deeds?

It is contended that the act is unconstitutional for the reason that it provides for the foreclosure of the lien of the state and the sale of the property, of private persons, without service of process. We have repeatedly held that this provision does not invalidate the law. Substituted service is sustained in proceedings *in rem*. The subject was fairly discussed in Ball *v.* Ridge Copper Company, 118 Mich. 7, and this case has been approved since. See Hooker *v.* Bond, 118 Mich. 255. See also Pritchard *v.* Madren, 24 Kan. 486; Leigh *v.* Green, (Neb.) 90 N. W. 255, 101 Am. St. Rep. 600; Chauncey *v.* Wass, 35 Minn. 1; 25 N. W. 457; 30 N. W. 286; Freeman on judgments, Sec. 607. We must consider the question settled.

36 The second question has been discussed in several cases, but counsel urge a reconsideration on the ground of certain sections of the tax law, which are said to be inconsistent with the rule, that the state acquires a title in fee to lands bid in for the state, and the further ground that what has been -aid in such cases is *obiter*. This title was acquired from the state before the passage of Act No. 229, p. 294, Public Acts 1897, and under section 72 of the tax law (Comp. Laws, Sec. 3895) the title conveyed was a title in fee. See Dawson *v.* Peter, 119 Mich. 274, Allen *v.* Cowley 128 Mich. 530; Hickey *v.* Rutledge (Mich.) 98 N. W. 974; Supervisor *v.* Aud Gen (Mich.) 98 N. W. 975; Monahan *v.* Aud Gen, (Mich.) 98 N. W. 1021; Raber *v.* Hyde (Mich.) 101 N. W. 61; Hoffman *v.* Loud (Mich.) 104 N. W. 424. The judgment is affirmed.

FRANK A. HOOKER.
AARON V. McALVAY.
CLAUDIUS B. GRANT.
CHARLES A. BLAIR.
JOSEPH B. MOORE.

(Endorsed:) Filed May 1, 1906 Chas. C. Hopkins Clerk Supreme Court.

37 At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the first day of May in the year of our Lord one thousand nine hundred and six.

Present, the Honorable William L. Carpenter, Chief Justice. Aaron V. McAlvay, Claudius B. Grant, Charles A. Blair, Robert M. Montgomery, Russell C. Ostrander, Frank A. Hooker, Joseph B. Moore, Associate Justices.

No. 20769.

WILLIAM TOOLAN and ALEXANDER McMILLAN, Plaintiffs,
vs.
JOHN M. LONGYEAR and JAMES MONROE, Defendants and Appellants.

The record and proceedings in this cause having been removed to this court by Writ of Error, issued to the Circuit Court for the County of Clinton, and the same, and the matters in Error assigned, having been seen and inspected and duly considered by the Court, and it appearing to this Court that in said record and proceedings, and in the giving of judgment in said Circuit Court there is no error. Therefore it is ordered and adjudged that the judgment of said Circuit Court for the County of Clinton be and the same is hereby in all things affirmed, and that the plaintiffs do recover of the defendants, their costs, to be taxed, and that they have execution therefor. It is further ordered that the cause be remanded to the court below for further proceedings under the statute.

STATE OF MICHIGAN, *ss:*

I, Charles C. Hopkins, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said Court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court, at Lansing, this — day of ——, in the year of our Lord one thousand nine hundred and —.

—— ——, *Clerk.*

38 *Petition for Allowance of Writ of Error.*

To the Honorable the Supreme Court of the United States:

Your petitioner, John M. Longyear, of Boston, in the state of Massachusetts, respec-fully shows:

I.

That on the 28th day of November, 1896, he was a resident of Marquette, Michigan, and had been for more than ten years next before that time, and that he was the owner in fee and possessed of certain real estate and premises with the appurtenances situated in the township of Eagle, county of Clinton, and State of Michigan, known and described as follows:

The east half (½) of the northeast quarter (¼) of section seven (7), of township five (5) north, range four (4) west, of great value, to-wit, of the value of Three thousand dollars ($3000.00) and upwards.

On the said 28th day of November, 1896, one William Toolan and one Alexander McMillan, of Lansing, Ingham County, Michigan, claiming to be the owners of said land so as above described, and to be entitled to the possession thereof adverse to your petitioner, brought their suit in ejectment in the Circuit Court for the county of Clinton, where the said lands are located against your petitioner and one James Monroe, the said James Monroe being then and there in possession of said lands as tenant under your petitioner. That personal service of the declaration by which the said suit in ejectment was commenced was made upon your petitioner and upon the said James Monroe, as defendants in said ejectment suit, and the said defendants caused their appearance to be entered in said cause by their counsel, and such proceedings were afterwards had in said ejectment suit that plaintiff therein recovered a judgment against your petitioner and the said James Monroe.

39 II.

And your petitioner further shows that upon the trial of the said cause, the said William Toolan and Alexander McMillan, the plaintiffs in said ejectment suit, based their title and right to recover in said action upon two certain Auditor General's tax deeds purporting to have been given by Stanley W. Turner, Auditor General for the

State of Michigan, upon a sale of said lands for the delinquent taxes assessed thereon for the years 1891 and 1892, and your petitioner claimed under the original title from the United States. In support of the said Auditor General's deeds the plaintiffs offered in evidence the enrolled decree and proceedings taken in the Circuit Court for Clinton County, In Chancery, on the petition of the Auditor General for the sale of lands delinquent for the taxes of 1891 and 1892, from which it appeared that there had been no personal service of process upon your petitioner or the said James Monroe, being respectively the owner and occupant of said lands at the time said tax proceedings were commenced, and no reason being shown why such service was not had other than that no personal service was required by the statute in such case made and provided. And it was claimed and insisted on behalf of your petitioner that the decree and order of sale made in said tax proceedings without personal service of process were without jurisdiction, and that the deed made in pursuance of said decree and order of sale was invalid as being an attempt to deprive your petitioner of his property without due process of l in violation of the 14th amendment to the Constitution of the Un d States.

And your petitioner further shows that the said Circuit Court for the county of Clinton, duly considered the said claim of your petitioner so made as aforesaid, and in its decision thereon held and determined as follows:

"I find that the statute providing for a decree and sale of land for delinquent taxes without personal service of process upon the owner of the land, and the provision which makes publication equivalent to personal service, are not in contravention of the 14th Amendment to the Constitution of the United States."

To which ruling of the said Circuit Court your petitioner duly excepted.

40 III.

Your petitioner further shows that from the judgment so rendered in the Circuit Court for the county of Clinton in favor of the said William Toolan and Alexander McMillan, and against your petitioner and the said James Monroe, your petitioner took an appeal to the Supreme Court of the state of Michigan, the same being the Court of last resort in said state, and on such appeal as one of the grounds of error, your petitioner assigned that the said Circuit Court for the county of Clinton erred in finding and holding that the statute providing for a decree and sale of lands for delinquent taxes without personal service of process upon the owner of the land and the provision of the statute which makes publication equivalent to person- service are not in contravention of the 14th amendment to the Constitution of the United States. And upon the hearing of said appeal in the Supreme Court of the State of Michigan, the error so assigned by your petitioner was by said Supreme Court expressly overruled, and it was decided and held by the said Supreme Court that the Circuit Court for the county of Clinton did not err in holding and in finding that the statute providing for a decree and sale of lands for delinquent taxes without personal service of process upon the owner of the

land and the provision which makes publication equivalent to personal service upon the owner was not in contravention of the 14th amendment of the Constitution of the United States.

IV.

And your petitioner further shows that at the time the said taxes were assessed against your petitioner's lands in 1891 and 1892, and at the time the proceedings were commenced upon the petition of the Auditor General to obtain an order and decree for the sale of said lands for the taxes delinquent thereon for said years, and for many years before and after, your petitioner was a resident citizen
41 at Marquette, in the State of Michigan, and the said James Monroe, both before and continuously after the assessment of the said taxes and commencement of said proceedings, was a resident of the county of Clinton and in actual occupation and possession of said lands as the tenant of your petitioner.

V.

Your petitioner is advised by counsel and verily believes that upon the hearing of the said cause in the Supreme Court of the State of Michigan, there was drawn in question by your petitioner the validity of a statute of the State of Michigan, on the ground that said statute was repugnant to the Constitution of the United States,, and that the decision of the said State Supreme Court was against the right and privilege and immunity claimed by your petitioner, and in favor of the validity of said statute, and that the effect of the said decision of the Supreme Court of the State of Michigan is in denial of the right, privilege and immunity claimed by your petitioner under the 14th amendment to the Constitution of the United States. Said decision was made and entered on the 1st day of May, 1906.

Annexed hereto is a copy of the record upon which the said cause was heard in the Supreme Court of Michigan, to which your petitioner prays leave to refer.

Wherefore your petitioner prays that a Writ of Error may issue on behalf of your petitioner and his corespondent James Monroe from the Supreme Court of the United States to be directed to the Supreme Court of the State of Michigan, according to the rules and practice in such case.

JOHN M. LONGYEAR.
EDWARD CAHILL,
His Attorney.

EDWARD CAHILL,
Attorney for Petitioner, Lansing, Michigan.

42 STATE OF MICHIGAN, *County of Ingham, ss:*

On this 13th day of July, 1906, before me the undersigned, a notary public in and for said county, personally appeared Edward Cahill, and made oath that he is one of the attorneys for John M. Longyear, the petitioner named in the foregoing petition and has been from the commencement of the suit therein mentioned, and has

had entire charge of the case; That he is familiar, of his own knowledge, with all of the facts relating to said proceedings as set forth in said petition; that the said John M. Longyear, his client, is a resident of the city of Boston, Massachusetts, and is not familiar with such facts; and that deponent is authorized by him to verify this petition on his behalf; that he has read said petition and knows the contents thereof; and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to such matters he believes it to be true.

[Seal Orien A. Jenison, Notary Public, Ingham County, Michigan.]

ORIEN A. JENISON,
Notary Public in and for said County.

My commission expires Aug. 19, 1906.

43 UNITED STATES OF AMERICA, *ss:*

To William Toolan and Alexander McMillan, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of Michigan wherein John M. Longyear is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John M. Harlan, Associate Justice of the Supreme Court of the United States, this 14th day of November, in the year of our Lord one thousand nine hundred and six.

(Signed) JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

43½ STATE OF MICHIGAN, *County of Ingham, ss:*

On this 16th day of November, in the year of our Lord one thousand nine hundred and six, personally appeared Mary S. Cobb before me, the subscriber, a Notary Public in and for the County of Ingham and State of Michigan and makes oath that she delivered a true copy of the within citation to William Toolan one of the defendants in error named therein personally at the City of Lansing in said County on the 16th day of November 1906.

MARY S. COBB.

Sworn to and subscribed the 16th day of November, A. D. 1906.

HARRIET L. LAWRENCE,
Notary Public.

My commission expires March 17, 1909.

Due personal service accepted this 16th day of November, 1906 of the within Citation.

THOMAS, CUMMINS & NICHOLS,
Attorneys for Defendants in Error in the Court Below,
By CHAS. W. NICHOLS,
Member of Said Firm.

[Seal Harriet L. Lawrence, Notary Public, Ingham County, Mich.]

44 STATE OF MICHIGAN, *County of Ingham, ss:*

John H. Chase, being duly sworn, says that he resides at Lansing, in the said county and state, that he is acquainted with Alexander McMillan one of the defendants in error named in the annexed citation. That during the pendency of the action of ejectment wherein William Toolan and said Alexander McMillan were plaintiffs and John M. Longyear and James Monroe defendants, the said Alexander McMillan has become an incompetent person, and by an order, duly made and entered in the Probate Court of the county of Ingham and state of Michigan, this affiant was on 28 day of May 1906 appointed guardian of the person and estate of the said Alexander McMillan, and is now such guardian. That affiant has this day been personally served with a copy of the annexed citation and further deponent says not.

JNO. H. CHASE.

Subscribed and sworn to before me this 17th day of November A. D., 1906.

WM. C. HINMAN,
Notary Public, Ingham County, Mich.

My commission expires Sept. 11th 1910.

45 *Bond.*

Know all men by these presents, That we, John M. Longyear of Boston Massachusetts, as principal, and James E. Sherman and James E. Ball both of Marquette Michigan, as sureties, are held and firmly bound unto William Toolan and Alexander McMillan both of Lansing, Michigan, in the full and just sum of one thousand (1,000) dollars, to be paid to the said William Toolan and Alexander McMillan their certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this eighth (8th) day of November, in the year of our Lord one thousand nine hundred and six.

Whereas, lately at a session of the Supreme Court of the State of Michigan held at Lansing in said State, in a suit depending in said Court, between the said William Toolan and Alexander McMillan

as plaintiffs and the above bounden John M. Longyear and one James Monroe as defendants; a judgment was rendered against the said John M. Longyear and James Monroe defendants and the said John M. Longyear having obtained a Writ of Error, and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said William Toolan and Alexander McMillan citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said John M. Longyear shall prosecute said Writ of Error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

JOHN M. LONGYEAR. [SEAL.]
JAMES E. SHERMAN. [SEAL.]
JAMES E. BALL. [SEAL.]

Sealed and delivered in presence of—
HARVEY BURRIGHT HATCH.
HORACE J. LOBDELL.

Approved by—
JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

46 STATE OF MICHIGAN, *County of Marquette, ss:*

On this eighth day of November, A. D. 1906, before me, a Notary Public in and for the county of Marquette and state of Michigan, personally appeared James E. Sherman and James E. Ball both of the city of Marquette, in said county of Marquette, the sureties named in and who signed the within and foregoing bond, who, being duly sworn, did each depose and say that he is worth in unincumbered property, not exempt from execution under the laws of this state, the sum of one thousand dollars ($1,000.00), after the payment of all just debts, claims and liabilities.

[NOTARY SEAL.] HARVEY BURRIGHT HATCH,
Notary Public in and for Said County — Marquette and State of Michigan.

My Commission expires 6 July, 1910.

UNITED STATES OF AMERICA,
Western District of Michigan, Northern Division, ss:

I, Francis M. Moore, deputy Clerk of the Circuit Court of the United States for the Northern Division of the Western District of Michigan, do hereby certify that I am personally acquainted with the sureties named in and who signed the within and foregoing bond,

and that each of said sureties is worth in unincumbered property, not exempt from execution under the laws of the state of Michigan, the sum of one thousand dollars ($1,000.00), after the payment of all just debts, claims and liabilities.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at the city of Marquette, in said Northern Division of the Western District of Michigan, this 8th day of November, A. D. 1906.

[Seal Circuit Court U. S.]

FRANCIS M. MOORE,
Deputy Clerk.

47 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Michigan, Greeting:

[Seal of the Supreme Court of the United States.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between William Toolan and Alexander McMillan, plaintiffs, and John M. Longyear and James Monroe, defendants, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause
48 of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said John M. Longyear, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the

United States, the 14th day of November, in the year of our Lord one thousand nine hundred and six.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

49 To the Supreme Court of the United States:

The execution of the within Writ appears by the transcript of record hereto annexed.

Dated Lansing, Michigan, Dec. 24, 1906.

[Seal of the Supreme Court of Michigan. Lansing.]

CHAS. C. HOPKINS,
Clerk of the Supreme Court of the State of Michigan.

50 Supreme Court of the State of Michigan.

JOHN M. LONGYEAR, Plaintiff in Error,
vs.
WILLIAM TOOLAN and ALEXANDER McMILLAN, Defendants in Error.

STATE OF MICHIGAN:

In the Supreme Court, *ss:*

I, Charles C. Hopkins, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the annexed and foregoing is a true and correct copy of the record and of all procedings had and entered in the above entitled cause by said Court, including the written decision and reasons therefor, signed by the Judges of said Court, and filed in my office, as appears of record and on file in said cause; that I have compared the same with the original, and it is a true transcript therefrom and of the whole thereof; that attached thereto are the Petition for allowance of the Writ of Error, the citation, with proof of service of copy endorsed thereon; a copy of the bond to the adverse party, duly approved, filed with the writ of error, and the Writ of Error, with allowance endorsed thereon.

In testimony whereof I have hereunto set my hand and affixed the seal of said Supreme Court at the City of Lansing, this twenty-fourth day of December in the year of our Lord one thousand nine hundred and six.

[Seal of the Supreme Court of Michigan. Lansing.]

CHAS. C. HOPKINS,
Clerk Supreme Court of Michigan.

Endorsed on cover: File No. 20,497. Michigan Supreme Court. Term No. 177. John M. Longyear, plaintiff in error, *vs.* William Toolan and Alexander McMillan. Filed December 26th, 1906. File No. 20,497.

BRIEF FOR PLAINTIFF IN ERROR.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

Office Supreme Court,
FILED.
NOV 26 1907
JAMES H. McKENN

No. 177.

JOHN M. LONGYEAR, PLAINTIFF IN ERROR,

vs.

WILLIAM TOOLAN AND ALEXANDER McMILLAN.

EDWARD CAHILL, *Attorney for Plaintiff in Error.*

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

Robert Smith Printing Co., Lansing, Mich.

UNITED STATES OF AMERICA

IN THE SUPREME COURT

JOHN M. LONGYEAR, Plaintiff in Error,

vs.

WILLIAM TOOLAN and ALEXANDER MCMILLAN, Defendants in Error.

Error to the Supreme Court of Michigan.

ASSIGNMENT OF ERRORS.

And the plaintiff in error says:

That the Supreme Court of the State of Michigan erred in ruling and holding that the decrees and orders of sale under which the lands in controversy were sold for delinquent taxes of 1891 and 1892, were valid, notwithstanding they were made without personal service of process; and that section 66 of the general tax law of 1893 of the State of Michigan, as amended, which makes the publication of the order and petition filed by the Auditor General against delinquent tax lands, equivalent to a personal service of process upon the owner of the land, is not in contravention to the 14th amendment of the constitution of the United States, which provides, among other things, that:

"No statute shall make or enforce any law which shall * * * deprive any citizen of life, liberty or property without due process of law, * * *."

And that said court erred in affirming the judgment of the circuit court for the County of Clinton, State of Michigan, to the same effect and in overruling plaintiff's in error's exceptions thereto.

EDWARD CAHILL,
Attorney for Plaintiff in Error.

UNITED STATES OF AMERICA

IN THE SUPREME COURT

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1 JOHN M. LONGYEAR, Plaintiff in Error,

vs.

WILLIAM TOOLAN and ALEXANDER MCMILLAN, Defendants in Error.

Error to the Supreme Court of Michigan.

Brief for Plaintiff in Error.

This is an action of ejectment brought to recover 80 acres of land described as the east half of the northeast quarter of section 7, town 5 N., R. 4 W., Clinton County, Michigan.

The defendants in error, plaintiffs below, claim under two auditor generals' deeds for the delinquent taxes of 1891 and 1892. The plaintiff in error, defendant below, claims under the original title from the United States.

The case was tried in the Circuit Court of Clinton County before the circuit judge without a jury, who, at the request of counsel for defendant, made and filed a written finding of facts and law.

On the trial the defendants below offered evidence tending to show the assessment of the taxes upon the land in question for the years 1891 and 1892 respectively, that the same were returned as delinquent to the auditor general's office as required by law. That such lands were afterwards included by the auditor general in a petition with lists of lands attached subscribed by him and addressed to the circuit court for the county of Clinton in chancery praying for a decree and order of sale against said lands for the amount of the delinquent taxes, interest and costs and filed
2 with the clerk of said court in said county. That the petition relating to the delinquent taxes of 1891 was filed Sept. 5th,

2 JOHN M. LONGYEAR VS. WILLIAM TOOLAN ET AL.

1893, upon the filing of which an order of hearing was made by the circuit judge for the 24th day of November, 1893, and the petition relating to the taxes of 1892 was filed on Aug. 29th, 1894, upon the filing of which an order of hearing was made by the circuit judge for the 12th day of November, 1894. That said orders of hearing together with a list of lands attached were duly published in a newspaper published in the county of Clinton and proof of such publication by affidavit made and filed. That upon the petition filed in 1893 a decree was made on the 25th day of November, 1893, and on the petition filed in 1894 a decree was made and entered on the 19th day of November, 1894. To the evidence so offered by the plaintiff the defendant objected upon the ground, among others, that there was no proof of any personal service of process upon the defendants or either of them, which objection was overruled and the defendant excepted. R. 9 and 10.

The plaintiff offered evidence tending to show that in pursuance of the decree made in each year said lands were sold for the delinquent taxes, interests and costs so decreed against them and bid in to the state in each year. That afterwards the plaintiffs, the defendants in error, acquired the interest of the state by virtue of two certain tax deeds made by the auditor general in which the auditor general quit-claimed to the plaintiff, defendants in error, all the rights acquired by the state in virtue of such original sales. Said deeds appear in the record as Exhibits A and E on pages 17 and 25.

3 Upon the evidence so submitted the circuit judge made and filed a written finding of facts and of law which appears on page 3 of the record, after the filing of which counsel for plaintiffs in error, defendants below, requested a further finding of facts and law, which request appears at page 2 of the record, and thereupon the court made a further finding to cover the specific request of counsel for plaintiff in error, defendant below, which appears at page 4 of the record.

It appears from this finding that at the time of the assessment of the taxes upon the lands in question for 1891 and 1892 the defendant Longyear was the owner of the land and that the defendant Monroe was in possession as his tenant. That both Longyear and Monroe were residents of the state of Michigan. That no personal service of process was made or attempted to be made upon either Longyear or Monroe and no notice

given them of the proceedings taken upon the petitions of the auditor general filed in 1893 and 1894 other than the notice by publication; and it was held and determined by the circuit judge that such notice by publication was sufficient and the court refused to find as a matter of law as requested that the decree entered in 1893 for the taxes of 1891 and the decree entered in 1894 for the taxes of 1892 and the sales made in pursuance thereof were void and of no effect for lack of personal service of process upon the owner of the land, and refused to find that section 66 of the general tax law of 1893 as amended, which makes the publication of the order and petition equivalent to a personal service of process upon the owner of the lands, is void for the reason that it deprives the citizen of his property without due process of law and is
4 therefore in violation of the 14th amendment of the Constitution of the United States, which provides, among other things, as follows:

"No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

To the refusal of the circuit judge to so find, as a matter of law, counsel for plaintiff in error, defendant below, duly excepted.

Thereupon a judgment was entered in due form in favor of the plaintiff below, for the recovery of the lands in question.

The plaintiff in error, defendant below, having caused a bill of exceptions to be settled by the circuit judge, the cause was removed to the Supreme Court of the State of Michigan by writ of error in which court error was assigned among others, as follows:

"2. That the court erred in finding that the statute providing for a decree and sale of lands for delinquent taxes without personal service of process upon the owner of the lands and the provision which makes publication equivalent to personal service are not in contravention of the 14th amendment to the Constitution of the United States."

Such proceedings were afterwards had that the cause was brought on for hearing before the said Supreme Court and a judgment was entered by the said Supreme Court overruling the assignment of error so made and affirming the judgment of the court below.

Whereupon a writ of error was sued out from this court to the

Supreme Court of Michigan to review the ruling of the court upon the question as to whether the tax law of Michigan was in contravention of the 14th amendment of the Constitution of the United States for the reasons set forth in said assignment of error.

5 The provisions of the Michigan tax law enacted in 1893 under which these proceedings were taken, are found in sections 60 to 70, both inclusive and section 34, which are printed as an appendix to this brief.

Argument.

The owner of property liable to be taxed *ad valorem* is interested in and is entitled to be heard at some stage of the proceedings upon two questions affecting such taxes before he will be held to be conclusively bound by any decision of them.

a. The valuation of the property by the assessing officers or board.

Avery vs. Saginaw, 44 M. 587.
Caledonia vs. Rose, 94 M. 216.

b. The validity of the taxes, i. e., as to whether they have been voted by lawful authority and for a lawful purpose.

No question is made in this case in regard to the valuation, but it is claimed that the other question, viz., the validity of the taxes for which plaintiffs in error lands have been sold has been conclusively adjudicated against him under the laws of Michigan as interpreted by the highest court of that State without his having had such notice of, or opportunity to be heard as the demand for due process of law requires under the decisions of this Court.

Under the earlier tax laws of Michigan the proceedings for bringing delinquent tax lands to sale were administrative and a tax deed given on such sale was *prima facie* evidence only of the regularity of the proceedings leading up to it. It was open to the owner of the original title claiming adversely to the title to defeat such tax deed by proof that any step in such proceedings injuriously affecting his interest had not been taken in conformity to the statute.

Sibley vs. Smith, 2nd. Mich. 487.
Clark vs. Crane, 5 M. 151.

Maxwell vs. Paine, 53 M. 30.
Boyce vs. Sebring, 66 M. 210.
6 Culbertson vs. H. Witbeck Co., 127th U. S. 326.

But in 1889 the state adopted a system by which lands returned as delinquent were to be brought before the circuit court for the county in which they were located, on a petition of the Auditor General, and a decree taken in favor of the state against the lands for the amount of the taxes, interest and costs and under that statute the decree rendered was *conclusive of all questions in the course of the tax proceeding prior to such decree.* The statute of 1889, however, provided for personal service of process upon resident owners of land. In 1893 a new tax law was enacted substantially like the law of 1889, except that it did away with the necessity of personal service of process and assumed to make notice by publication equivalent to the personal service of process on all the persons who were interested in the lands and to give the court jurisdiction to hear and determine all questions and decree a sale of the lands. And it has been held by the Supreme Court of Michigan, in this case, that this decree rendered against a resident owner of lands without other notice to him than the publication required by the statute is absolutely conclusive upon him and that a sale under it divests him absolutely of his lands.

We contend that, except in Michigan, no court has ever held that notice by publication under a statute like the Michigan statute was equivalent to personal service of process upon a resident owner of land.

It is true that it has been held that notice by publication is sufficient *where the statute itself contains a notice of the time and place where the owner of property can be heard in defense of his title,* but in such cases the substantial notice is not by publication but *is in the statute itself.*

7 As was said by this Court in Winona and St. Paul Land Company vs. State of Minnesota, 159th U. S. 526, notice by publication is sufficient "Where, as here, the statute prescribed the court in which, and the time at which the various steps in the collection proceedings shall be taken."

We go farther, and concede that where the time and place of hearing is so fixed by the statute no other notice, whether personal or by publication is necessary. Our contention is, however, that

when notice by statute is relied on to supply the place of process it must contain the elements of notice and must be as definite and certain in all the essentials of notice as any other legal process. That if a statute is deficient in respect to prescribing with certainty the time and place of hearing, the defect cannot be supplied by publication of the notice unless the statute also fixes definitely the time and place when and where the publication shall be made and so furnishes, by reference, a means of certainty. What is required is *notice* and notice to be of value must possess certainty or furnish the means of certainty to the person entitled to it.

We do not find that this Court has ever gone beyond this in the many cases in which the question has been considered.

In the State Railroad Tax Cases, 92 U. S. 575, the point involved was as to whether the railroads of Illinois were entitled to personal notice of the sittings of the Board of Equalization of railroad Property for taxation, and upon that question this Court said, *"This Board has its time of sittings fixed by law.* Its sessions are not secret. No obstruction exists to the appearance of any one before it to assert a right of redress for wrong and in the business of assessing taxes this is all that can be reasonably asked."

8 In McMillan vs. Anderson, 95th U. S. 37, a tax collector in Louisiana seized the property of the plaintiff in error and was about to sell it for the payment of his license tax as a person engaged in the business of selling liquors. In accordance with the laws of Louisiana, plaintiff in error brought an action in the proper court for trespass and in the same action obtained a temporary injunction against the sale of the property seized. Defendant pleaded that the seizure was for taxes due and was what his duty as collector required him to do. On a full hearing the courts sustained the defense and gave a judgment under the statute against the plaintiff. The case came to this Court on the claim that plaintiff had been deprived of his property without due process of law. But, as a matter of fact, the record disclosed that plaintiff had had his day in court, by being permitted by the laws of Louisiana to commence his suit in trespass and to restrain the collection of taxes until the question of whether he was engaged in a business which was liable to the payment of the license tax imposed by law. That question must have been litigated in that suit and plaintiff was defeated. It was idle for him to say, after that, that his property had been taken without due process of law.

In Davidson vs. Board of Administration of New Orleans, 97 U. S. 108, the question was as to whether an assessment of taxes for public improvement in New Orleans could be collected. In speaking of the statute authorizing the tax and its collection, Mr. Justice Miller said:

"Before the assessment could be collected or become effectual, the statute required that a table of assessment should be filed in the proper district court of the state, *that personal service of notice with reasonable time to be heard, should be served on all owners who are known and within reach of process and due advertisement made as to those who are unknown or could not be found.* This was complied with, and the party complainant herein appeared and had a full and fair hearing in the court of the first instance and afterwards in the Supreme Court. If this be not due process of law then the words can have no definite meaning as used in the statute."

In Hager vs. Reclamation District, 111th U. S. 701, the question was whether, under the laws of California, an assessment for local improvements could be made and this Court, passing upon the questions involved, laid down the general proposition that,

"Where tax is levied on the property not specifically but according to its value, to be ascertained by assessors appointed for that purpose, upon such evidence as they may obtain * * * the officers in estimating the value act judicially and in most of the states provision is made for the correction of errors commited by them through Boards of Revision or Equalization, sitting at *designated periods provided by law* to hear complaints respecting the justice of the assessment. *The law in prescribing the time when such complaints will be heard gives all the notice required* and the proceeding by which the valuation is determined, though it may be followed, if the tax be not paid, by a sale of the delinquent's property, is due process of law."

In Cinn. N. O. & T. P. R. Co. vs. Ky., 115 U. S. 321, the question was as to whether, under the statute of Kentucky, there had been such notice of the meeting of the Board of Equalization for the purpose of valuing railroad properties for taxation as would constitute due process of law. Under the statute of that state the Board of Equalization was required to meet for the purpose of making the valuation *on the first day of September in each year at the office of the Auditor at the seat of government* when the returns

made by the railroads were to be submitted to them, the statute declares that, "Should the valuation be either too high or too low, they shall correct and equalize the same by a proper increase or decrease thereof. Said board shall keep a record of their proceedings to be signed by each member present at any meeting, etc." In the performance of these duties the sessions of the Board were limited to a period of not longer than twenty days. The meetings were public. *"The time and place of holding them are fixed by law."* It appears also from the opinion in a paragraph quoted from the opinion of the Supreme Court of Kentucky that the parties not only had a *right to be heard, but were in fact heard,* before the Board passed on the question of valuation. But the point to which we cite the case is that the time and place for the hearing was fixed by law.

In Spencer vs. Merchant, 125th U. S. 345, the question involved was the constitutionality of a New York statute which it was claimed provided for relevying a tax that had been set aside as illegal without providing for sufficient notice to the taxpayer to constitute due process of law. This Court, in passing upon this question and speaking of the New York statute, said, *"The statute of 1881 afforded to the owners notice of hearing* upon the question of the equitable apportionment among them of the sum directed to be levied upon all of them, and thus enable them to contest the constitutionality of the statute and that was all the notice of hearing to which they were entitled."

In Pittsburg, C., C. & St. L. Ry. Co. vs. Backus, 154th U. S. 421, the question involved was as to whether the Indiana statute providing for assessment of railroad property for taxation by a state board, failed of due process of law in that it did not require *personal notice* before the assessment were made final and it was held by this Court, Mr. Justice Brewer writing the opinion, that the statute was not defective in that respect because *"The statute names the time and place for the meeting of the assessing board and that is sufficient in tax proceedings. Personal notice is unnecessary."*

The learned justice also comments upon the fact that the complainant party not only had the statutory notice, but in fact appeared and was heard by its counsel and through its officers.

The latest case and the one most nearly like the case at bar is that of the Winona Land Co. vs. Minn., 159th U. S. 526, which we have already cited.

We shall attempt to show, by drawing a parallel between the Michigan and the Minnesota statutes, what we deem to be the substantial differences between them. We claim, broadly, that the Minnesota statute, by its terms, fixes the time and place of hearing so that the taxpayer need not go outside the statute to ascertain when he must appear if he desires to be heard and we shall claim that the Michigan statute fails in this regard, and by its terms gives the taxpayer no notice of a time and place when he may be heard. For this purpose we have printed at the end of our brief, following the provisions of the Michigan statute, those provisions of the Minnesota statute which cover the same ground.

We desire to call attention to the various provisions of the Michigan statute commencing with section 61 and outline to the Court what the various sections contain.

Section 61 provides that *as soon as practicable* after the 12th day of June in each year the Auditor General shall prepare and file in the office of the county clerk a petition addressed to the circuit court in chancery, stating therein by apt references to lists or schedules annexed, a description of all lands in said county upon which taxes have remained unpaid for more than a year prior to the first day of May, 1893, or the first day of May of the year in which the petition is filed. Such petitions shall pray a decree in favor of the state against said lands for the payment of the amounts specified as due thereon and in default thereof that such lands be sold.

The remainder of the section relates to details. The specific
12 points to which we call the attention of the Court in this section is its lack of definiteness as to when this petition shall be filed. Under it the petition was filed in the case at bar in 1893 on the 5th day of September, and in 1894, on the 29th day of August, nearly three months after the 12th day of June, that being the only date mentioned in the statute.

Section 62 makes it the duty of the county clerk on the filing of the petition to at once present the same to the circuit judge and it is made the duty of the circuit judge to make an order in the form prescribed by the statute, but no time is fixed on which or within which, the circuit judge shall make this order. Neither is the circuit judge required to fix the day of hearing on any day certain nor within any specified time. It is left by the statute to his convenience. The form of the order required by section 62 to be made, requires the court to set a time and place for the hearing

on the Auditor General's petition, but does not specify how or in what manner notice of the time and place so specified shall be given to the parties interested.

Section 63 provides that the newspaper in which such order and petition is to be published shall be designated by the Auditor General on or before the first day of July in each year, but he is not required to give any public notice of such designation.

Section 64 provides that in case there is no paper published in such county *or if from any cause no paper can be secured in any county to publish such order and petition,* the Auditor General shall cause such order and petition containing the list of lands delinquent for taxes to be printed in proper form for general distribution and shall furnish the county treasurer with such number of the same as may be necessary to furnish *each voter* at the last general election in said county with one copy, and such county treasurer shall distribute the order and petition *in such manner that copies thereof may become public* in every township in said county, and
13 shall post or cause or be posted three copies in three public places in each township and shall file affidavit of the posting and distribution of the same in the usual form in the office of said county treasurer and of the Auditor General.

This is, we think, a unique method of giving notice of judicial proceedings by publication. It has been usual in Michigan where notice by publication is permitted, as in the case of absent or concealed defendants, to require the publication to be made in some paper in the county to be designated in the order or if there be no paper published in the county in such other paper as the court may direct. Com. Laws, 1897, Sec. 487.

Or, in a case of attachments where the defendant cannot be served to be published in some newspaper printed in the county or if no paper is printed in the county, then in some newspaper printed in the judicial circuit. Com. Laws 1897, Sec. 10,572.

It might not be difficult for one to learn whether there was a newspaper printed in the county where he owned lands, but how is the public to know that "no paper can be secured in any county to publish such order, etc." How is it to be known in *what manner* the county treasurer shall conclude to distribute the copies furnished him so "that notice thereof may become public in every township in said county." Who shall decide whether he has "posted three copies in three public places in each township?" It will be noticed

that this section of the statute does not require this affidavit of posting and distribution by the county treasurer to be filed with the court before which the proceedings are pending, but to be filed in the office of the county treasurer and the Auditor General.

Section 65 relates to the cost of advertising.

14 The first part of section 66 provides that the Auditor General shall cause a copy of said order and a copy of said petition to be published at least once in each week for four successive weeks next prior to the time fixed for the hearing thereof in some newspaper published and circulating in the county where the said petition is filed to be selected by the Auditor General. Said order and petition shall both be published in the same newspaper, the order immediately preceding the petition, etc. This provision must, in view of what precedes it in section 64, be held to be modified by that section, that is to say, the language of section 64, which provides that in the contingency of the Auditor General not being able to secure the publication in a newspaper, the course prescribed in section 64 shall be followed.

Section 66 further provides that,

"The publication of the order and petition aforesaid shall be equivalent to the personal service of notice on all persons who are interested in the lands specified in such petition, of the filing thereof, of all the proceedings thereon and of the sale of the lands under the decree, and shall give the court jurisdiction to hear such petition, determine all questions arising thereon, and to decree a sale of such lands for the payment of all taxes, interest and charges thereon. * * * Proof of the publication of the order and petition herein required shall be filed in the office of the county clerk before any final order is made. * * * At least ten days prior to the time fixed for the sale of such lands the court shall make a final decree in favor of the State of Michigan for such taxes, interest and charges as shall be valid and determine the total amount thereof chargeable against each parcel of land and shall order and decree that such several parcels of land or so much of each as may be necessary to satisfy the amount fixed by such decree, shall severally be sold as the law directs. Such decree shall be considered as a sev-

15 eral decree in favor of the State of Michigan against each parcel of land for each tax included therein."

Section 67 provides for the entry of this decree and other details connected therewith, which it is not necessary to refer to here, al-

though it will be found printed with the other sections at the end of this brief.

Sections 68 and 69 also relate to matters which are not pertinent to this inquiry.

Section 70 provides for the sale of the lands under the decree by the county treasurer and the report of such sales to the Auditor General.

It provides that,

"If any parcel of land cannot be sold for taxes, interest and charges, such parcel shall be passed over for the time being and shall, on the succeeding day or before the close of the sale be reoffered; and if, on such second offering, or during such sale, the same cannot be sold for the amount aforesaid the county treasurer shall bid off the same in the name of the state, for the state, county and township in proportion to the taxes, interest and charges due each. And in such case, the county, township, school and other taxes assessed on the land so bid off to the state and the interest and charges thereon shall remain a lien upon said lands, and any person or persons who shall afterward purchase such lands of the state as state tax lands or otherwise, shall be liable for and shall pay all taxes then remaining unpaid and assessed against such lands together with the interest thereon at the rate of eight per cent per annum and the charges, collection fee and cost of advertising provided in section 59
16 of this act, from the time said lands were returned delinquent for taxes until the time of said sale."

And it is further provided,

"All sales shall stand confirmed subject to the right of redemption provided for in section 74 unless objections thereto are filed within eight days after the time limited for filing such report, without the entry of an order or further notice. The practice with reference to setting aside such sale shall be the same so far as applicable, as a sale in equity, on the foreclosure of mortgages: *Provided*, no sale shall be set aside for inadequacy of price, except upon payment of amount bid upon such sale with interest and costs: *And provided further*, That no sale shall be set aside after confirmation, except in cases where the *taxes were paid* or the property was *exempt from taxation*. *In such cases*, the owner of such lands may move the court at any time within *one year* after he shall have notice of such sale to set the same aside and the court may so order upon such terms as may be just."

Section 84 provides as follows:

"Any person may purchase any state tax lands paying therefor the amount for which the same was bid off to the state with interest on the same at the rate of eight per cent per annum from date of sale, together with the other taxes remaining a lien on such lands at the time of the purchase so made with the interest thereon at the rate provided in this Act. Upon making payment as above said purchaser shall be entitled to receive a certificate and a deed conveying all the right, title and interest of the state to such tax lands acquiring or accrued by virtue of the original sale or sales to the state. All the provisions of law relating to deeds executed by the Auditor General on the surrender of certificates of sale made
17 by the several county treasurers shall be applicable in making deeds for such purchases."

With reference to the proceedings so outlined, the Supreme Court of Michigan in Muirhead vs. Sands, 111th M. 487-495, uses the following language:

"The statute makes the publication the equivalent of personal service and it is therefore the duty of the owner to *watch the proceedings* provided for by the statute for the foreclosure of the lien and interpose any objection he may have to the validity of the tax. The purpose of the statute is to give every person his day in court in an equitable proceeding. * * * If the owner permits the case to proceed to the decree all these questions become *res adjudicata.*"

It is the finality of this proceeding that works the hardship. If the proceedings up to and under the decree were treated merely as *prima facie* evidence of the regularity of the proceedings as under former Michigan statutes heretofore referred to, no fault could be found with them.

The argument usually made in support of substituted service in tax cases is that every property owner is bound to take notice that his property is subject to taxation and of the laws for their collection and there is force in this, where the law itself gives a land owner notice of the time and place where he can be heard with reference to the matters which concern him; but is it true, where the statute does not give him information, that the owner of land must at his peril *keep watch* of the steps taken by the different officers charged with the collection of taxes so as to know when it

will suit their convenience to take such steps and to be ready to meet them?

It seems to us clear that under the Michigan statute, the publication serves no useful purpose whatever and that the land owner's only safety lies in his applying to the different taxing officers
18 from time to time for the information necessary for his protection. If the provision requiring publication were eliminated from the statute, would this Court hold that the fact that a taxpayer could, by inquiry at the proper offices, find out whether any of his lands had been returned delinquent, sufficiently answered the demand of due process of law?

The difference between the Michigan statute and the Minnesota statute is that the Michigan statute does not fix,

a. The time when the Auditor General's petition with the delinquent tax list annexed must be filed with the county clerk. Section 61.

b. The time when the order appointing the hearing must be made. Section 62.

c. The time when nor the place where the publication of the order and petition must be made. Section 66.

d. The time when the hearing will be had. Section 66.

e. The time when the objections to the tax may be filed. Section 66.

The Minnesota statute fixes a substantially definite time for all of these essential things.

a. The County Auditor's delinquent list corresponding to the Michigan Auditor General's petition and delinquent list must be filed by June 15. Section 70.

b. The notice of hearing corresponding to our order of hearing must be made within fifteen days from June 15, viz., by June 30. Section 71.

c. The notice of hearing must be published commencing within fifteen days after June 30 and continued for two consecutive weeks in so[illegible] newspaper of general circulation which has been
19 regularly published for at least three months previously in the county in which said real estate is situated if there be one, or in the county where the proceedings are instituted, or, if there be no such newspaper published in either county, then in some newspaper published within the judicial district. This provision makes it certain that the notice must be published for two weeks during

the month of July, and in a newspaper designated by resolution of the Board of County Commissioners of the county in which the taxes are levied at their annual meeting in January or March, a copy of which resolution certified by the County Auditor shall be filed in the office of the clerk of the county. Section 72.

d. Objections to taxes may be filed at any time within twenty days after the last publication of the notice. Section 75.

e. Such objections when filed, stand for trial at once if the court is in session, if, not, then at the next term. Section 77.

Under the Minnesota statute the publication serves but one purpose. It fixes the time when the objections are to be filed, viz., within twenty days after the last publication. But that is equivalent to saying within twenty days after July 15. The statute would have been clearer if it had used that language, for as the taxpayer is clearly informed as to the time when every other step is to be taken and the officer by whom it is to be taken, the publication is of but little, if any, service to him.

It must be conceded that purely administrative proceedings may be conducted with such formalities, as to notice to parties to be affected by them, as the legislature may prescribe. Due process of law in such cases, since they are not conclusive, does not necessarily mean the same as due process of law in judicial proceedings.

There are certain fundamental principles that underlie all court proceedings which neither the court nor the legislature can dispense with. These principles have become formulated in familiar maxims of the law the meaning and force of which it is too late for any authority to gainsay. They are a part of the settled and fixed law of the land. The law of all courts is "A law which hears before it condemns, which proceeds upon inquiry and renders judgments only after trial." A judicial proceeding without process is a travesty. "Due process of law in judicial proceedings means that notice or summons by which a party is tendered his day in court." Opinion of Grant, J., in Rouse-Hazzard Co. vs. Circuit Judge, 104th M. 239.

I recognize that there are exceptions to the rule that personal notice is necessary, based upon either necessity as in the case of non-resident, absent or concealed defendants, or, in the case of waiver of personal notice by agreement, as in the case of *cognovits.*

I do not mean to say that the legislature may not give notice in the law itself so as to constitute due process, but that the legis-

lature may not leave a party to "watch the proceedings" or to hunt for a time and place of hearing at the peril, in case he does not find it, of having a conclusive judgment rendered against him which will deprive him of his property.

There is no difficulty in a state's conforming to the very reasonable rule laid down by this Court which requires a tax law to fix the time and place of hearing upon the essential questions which affect the taxpayer if it is deemed necessary to dispense with personal service of process.

If a man's title to his property is dependent upon the hoary fiction that he "is presumed to know the law" in tax proceedings, then the law ought to be so clear and definite as to afford him protection. It is not reasonable to require him to "watch the proceedings" which may take place at the convenience of officials at any time during the summer and fall.

21 The Michigan tax law recognizes the reasonableness of this rule of notice in its provisions relating to a review of the assessments, by providing for a Board of Review and by fixing a definite time for hearings before it.

The Supreme Court of Michigan has recognized in numerous cases the importance to the taxpayer of this opportunity for review and has set aside taxes when it appeared that this provision of the tax law had been disregarded.

Aud. Gen. vs. Chandler, 108th M. 569.

In this case the circuit court had set aside the taxes because of the failure of the Board of Review to remain in session for the full time fixed by the statute. Speaking to this point the court said:

"The only other question necessary to pass upon is, what is the effect of the failure of the board of review to remain in session as the law required? The statute provides that 'said board of review shall meet at the office of the supervisor on the 4th Monday in May, at 9 o'clock in the forenoon, and continue in session during the day and the day following,' and that its sessions shall continue at least six hours a day. Sec. 30, Act No. 206 Public Acts 1893. The construction of this or a similar provision of the statute is not an unfamiliar proceeding in this court. See Avery vs. East Saginaw, 44th M. 587.

First Nat. Bank vs. St. Joseph 46th M. 526.
Williams vs. Saginaw, 51 M. 120.
Peninsula I. & L. Co. vs. Twp. of Crystal Falls, 60th M. 510.

In Twp. of Caledonia vs. Rose, 94th M. 216, it was held that,—

'The provision of the statute requiring the board to meet upon the days named is mandatory, and it cannot deprive the taxpayer of his hearing there, and thereby force him to a suit at law to obtain redress. Defendant was entitled to assume that the board would remain in session the full length of time provided by the statute, and to arrange to be present any day he chose.'

The decree of the court below is affirmed, without costs."

A hearing before the Board of Review is not so important as is the hearing before the court when the final decree ordering a sale of the property is made for the reason that at the final hearing before the court the failure of the Board of Review to meet as required by the statute can be taken advantage of as well as all other irregularities affecting the legality of the tax assessed. For this reason the necessity for the tax payer having notice of the final hearing is greater. Yet the Michigan tax law, while providing a perfect notice for the meeting of the Board of Review, falls far short
22 of giving notice of the hearing at which the final decree is to be made. It cannot be said that there is such a necessity with reference to the collection of the revenues of the state as to make it necessary for the state to override settled principles. What the state can do by reasonable enactments to protect its citizens against the sequestration of their property by taxation, it should be held, as a matter of constitutional right, bound to do and we submit that the tax law of Michigan falls far short of conforming to this rule.

EDWARD CAHILL,
Attorney for Plaintiff in Error.
Lansing, Michigan.

23

APPENDIX.

I.

PROVISIONS OF MICHIGAN STATUTE RELATING TO THE SALE, REDEMPTION AND CONVEYANCE OF DELINQUENT TAX LANDS.

SEC. 60. All lands which have been or may hereafter be returned to the Auditor General as delinquent for taxes, and upon which any taxes are now or shall hereafter remain unpaid, after their return to the Auditor General under the provisions of this act, or to the several county treasurers of the State under the provisions of act number two hundred of the public acts
24 of eighteen hundred and ninety-one, for the period of one year or more, shall be subject to disposition, sale and redemption for the enforcement and collection of such tax liens, in the method and manner as hereinafter provided. In the disposition and sale of such delinquent tax lands the people of the State of Michigan shall be deemed to have a valid lien upon such lands, with all the rights to enforce the same as a preferred or first claim upon such lands, and the rights and choses to enforce such lien shall be held and construed by all the courts of this State as the *prima facie* rights of the State, and shall not be set aside or annulled except in the manner and for the causes herein specified.

OF THE NOTICE AND LISTS OF LANDS TO BE SOLD.

SEC. 61. As soon as practicable after the twelfth day of June, 1893, and as soon as practicable after the first day of June in each year thereafter, the Auditor General shall prepare and file in the office of the county clerk in each county in which lands are to be sold under the provisions of this act, a petition addressed to the circuit court for said county in chancery, stating therein by apt reference to lists or schedules annexed thereto a description of all lands in such county upon which taxes have remained unpaid for more than one year prior to the first day of May, 1893, or the first day of May of the year in which the petition is filed, and the total amount of such taxes, with interest computed thereon to the time fixed for the sale thereof, and a collection fee of four per cent. extended separately against each parcel of land, and he shall include with and add to such total amount against each parcel seventy cents for the cost of advertising and other expenses of sale. Such petition shall pray a decree in favor of the State of Michigan against said land for the payment

of the several amounts so specified therein, and in default thereof that such lands be sold. It shall be signed by the Auditor General and need not be otherwise verified, and shall be deemed equivalent to a bill in chancery to enforce the lien for such taxes, interest and charges, averring their validity, that they have not been paid, and praying for a sale to pay such lien. Lands hereafter bid off in the name of the State and thus held shall not be included in such petition. The petition shall be in a substantial record book, with the lists of lands and taxes annexed following the same therein. Such record shall be ruled with appropriate columns, one containing a description of the lands, with columns for the total amount of taxes, interest and charges claimed due on each parcel of land opposite thereto; also with blank columns, one with heading, "Parts of descriptions paid before sale or withheld;" another, "By whom paid;" another, "Amount paid before sale;" another, "Amount decreed against lands;" another, "Special orders;" another, "Interest in each parcel sold;" another, "Name of purchaser;" another, "Address of purchaser;" another, "Number of certificate;" another, "Remarks." The Auditor General may add such other columns as he may find necessary. The word petition shall be construed to include the lists annexed thereto. Said record shall be called "tax record." Parts of descriptions of lands upon which taxes are paid before sale, or which are withheld from sale, the amount paid on taxes before sale, the amount of taxes, interest and charges decreed against lands, special orders made by court relating to any parcel of land or any tax, the interest in each parcel of land sold, the name of each purchaser and his address, and the number of certificate of sale shall be entered in said record under their appropriate headings, opposite to the description of lands affected thereby.

SEC. 62. It shall be the duty of the county clerk, on the filing of the said petition, to at once present the same to the circuit judge of the county in which said delinquent tax lands are situate, and it shall be the duty of said circuit judge to make an order in the form herein prescribed, which order, when so made and signed by the circuit judge, shall be countersigned by the county clerk as register in chancery and recorded by him in the proper books of his office, and thereupon it shall be the duty of said county clerk to immediately make a true copy of said order, and transmit the same to the Auditor General. Said order shall be substantially in the following form:

STATE OF MICHIGAN, *County of* ..... ss.

The circuit court of the county of ....., in chancery.

In the matter of the petition of the State of Michigan for the sale of certain lands for taxes assessed thereon.

On reading and filing the petition of the Auditor General of the State of Michigan, praying for a decree in favor of the State of

Michigan, against each parcel of land therein described, for the amounts therein specified, claimed to be due for taxes, interest and charges on each such parcel of land, and that such lands be sold for the amounts so claimed by the State of Michigan.

It is ordered that said petition will be brought on for hearing and decree at the ..... term of this court to be held at ..... in the county of ....., State of Michigan, on the ..... day of ..... A. D. 18.., at the opening of court on that day, and that all persons interested in such lands or any part thereof, desiring to contest the lien claimed thereon by the State of Michigan, for such taxes, interest and charges or any part thereof, shall appear in said court and file with the clerk thereof acting as register in chancery, their objections thereto, on or before the first day of the term of this court above mentioned, and that in default thereof the same will be taken as confessed and a decree will be taken and
26 entered as prayed for in said petition. And it is further ordered that in pursuance of said decree the lands described in said petition for which a decree of sale shall be made, will be sold for the several taxes, interest and charges thereon as determined by such decree, on the first Monday in December thereafter, or on the day or days subsequent thereto as may be necessary to complete the sale of said list and of each and every parcel thereof, at the office of the county treasurer, or at such convenient place as shall be selected by him at the county seat of the county of ....., State of Michigan.

Witness the Hon. ....., circuit judge, and the seal of said circuit court of .....county, this ..... day of ....., A. D. 18...

Countersigned, ...

.....*Register.* *Circuit Judge.*

SEC. 63. The newspapers in which such order and petition are to be published shall be designated by the Auditor General on or before the first day of July in each and every year, and not afterwards, unless the publisher of the paper so designated shall fail to accept such designation within fifteen days after the same is made, or shall refuse or neglect to publish and print such order and petition, or unless from any other cause, such publication shall become impracticable; in which case the Auditor General shall designate some other paper for that purpose before the time limited for commencing such publication.

SEC. 64. In case there is no paper published in such county, or if from any cause no paper can be secured in any county to publish such order and petition, the Auditor General shall cause such order and petition containing the list of lands delinquent for taxes to be printed in proper form for general distribution, and shall furnish the county treasurer with such number of the same as may be

necessary to furnish each voter at the last general election in said county with one copy, and such county treasurer shall distribute the order and petition in such manner that copies thereof may become public in every township in said county, and shall post or cause to be posted three copies in three public places in each township, and shall file affidavit of the posting and distribution of the same in the usual form in the office of said county treasurer and of the Auditor General.

SEC. 65. The cost of such advertising shall in no case exceed the sum of forty cents for each description of land so advertised and sold, and shall be paid by the State Treasurer, upon the warrant of the Auditor General, out of the general fund of the State.

SEC. 66. The Auditor General shall cause a copy of said order and a copy of said petition to be published, at least once in each week for four successive weeks next prior to the time fixed for the hearing thereof, in some newspaper published and circulating in the county where such petition is filed, to be selected by the Auditor General. Said order and petition shall both be published in the same newspaper, the order immediately preceding the petition: *Provided*, In such petition it shall be sufficient to print against each parcel the "amount of taxes," "interest," "charges," "total" due on each. The cost of such publication shall be paid by the State on the warrant of the Auditor General, not exceeding forty cents for each parcel of land advertised. The proprietor of such paper shall furnish the proper county treasurer and Auditor General each with two copies of each issue containing such publication, and it shall be the duty of such Auditor General and treasurer to carefully examine the notices published and see that they are correct. Any person familiar with the facts may make an affidavit as to the publication required. The Auditor General shall not pay for any such publication until satisfied that it has been made according to law. The publication of the order and petition aforesaid shall be equivalent to a personal service of notice on all persons who are interested in the lands specified in such petition, of the filing thereof, of all proceedings thereon and of the sale of the lands under the decree, and shall give the court jurisdiction to hear such petition, determine all questions arising thereon, and to decree a sale of such lands for the payment of all taxes, interest and charges thereon. The circuit court in chancery shall have jurisdiction to hear, try and determine the matters alleged in such petition, even though the amount involved therein be less than one hundred dollars.

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It shall be the duty of the prosecuting attorney to prosecute all such proceedings on the part of the State. If he shall refuse, neglect or be unable to do so, the court shall appoint some competent person to take charge of and prosecute the same, who shall be paid by the county. The board of supervisors may employ some competent person to prosecute such proceedings or assist therein. Proof of the publication of the order and petition herein required shall be

filed in the office of the county clerk before any final order is made. Any person against whom a decree has not been taken desiring to contest the validity of any tax shall file in writing his objections thereto with the clerk of the county, on or before the day fixed in said notice for the hearing of such petition, and shall not be allowed to make any objection not therein specified. If within the first five days after the day fixed in such notice for the hearing of such petition it shall be made to appear to the court that any person has been prevented from filing objections to any tax, without fault on his part, such further time may be granted for that purpose as may seem proper, not exceeding five days. The court shall give precedence to the hearing of such petition over all other business, shall examine, consider and determine the matters therein stated and objections made in a summary manner without other pleadings, and make final decree thereon as the right of the case may be. The taxes specified in the petition shall be presumed to be legal and
28 a decree be made therefor unless the contrary is proved. Evidence shall be taken in open court. All oral testimony shall, at the request of any person interested, be written down and filed. The court may make such orders from time to time as may be necessary to facilitate the proceedings, and shall decide all questions as to the admissibility of evidence, and the decision so made shall be final, and not subject review or appeal. If the lands of two or more persons have been assessed together, the court may, if practicable, separate the same and apportion to each parcel its just proportion of the taxes, interest and charges. If any tax shall be found illegal, it shall be rejected. If a part of any tax shall be found illegal, such part shall be set aside, and the remaining tax shall be decreed valid. The total amount of taxes, interest and charges, as fixed by the court, shall be entered by the register of the court opposite each parcel of land in the column of said record under the heading, "Amount decreed against lands." If the court shall make any order setting aside the taxes on any parcel of land, or any part thereof, or any special order relating to any particular parcel of land, or taxes thereon, a brief entry of such order shall be made upon said record opposite such land or tax, which shall be signed by the judge of the court, either by his full name or initials, and such entry shall have the same effect as if made and entered as a part of the final decree. At least ten days prior to the time fixed for the sale of such lands, the court shall make a final decree in favor of the State of Michigan for such taxes, interest, and charges as shall be valid, and determine the total amount thereof chargeable against each parcel of land, and shall order and decree that such several parcels of land or so much of each as may be necessary to satisfy the amount fixed by such decree, shall severally be sold as the law directs. Such decree shall be considered as a several decree in favor of the State of Michigan against each parcel

of land for each tax included therein. The court may decree such costs against a person contesting any tax as may be equitable, if the tax, or any part thereof, which remains unpaid, be adjudged valid.

SEC. 67. Such final decree shall be entered in the chancery record for recording decrees of such court, have the usual caption for decrees, and shall be substantially in the following form: "In the matter of the petition of the State of Michigan for the sale of certain lands for taxes assessed thereon. The said petition and the matters therein stated, and the objections filed to certain taxes therein claimed [if any such objections are filed] came on to be heard, and proof of the due publication of notice of hearing of such petition having been made and filed, and after hearing all parties interested therein: It is ordered, adjudged, and decreed that the amount of taxes, interest, collection fee, and charges set down in the column headed 'Amount decreed against lands,' 29 in the tax record of which such petition forms a part, are valid, and decree is made in favor of the State of Michigan therefor against each parcel of said land for the amount set down in said column opposite to such parcel. It is further ordered, adjudged, and decreed that said several parcels of land, or such interest therein as may be necessary to satisfy the amount herein decreed against the same, shall be severally sold as the law directs. It is further adjudged and decreed that the several special orders made by this court, and entered on such tax record, are made a part hereof, with the same effect as if entered herein." If costs are adjudged against any person contesting a tax, the decree therefor shall be in proper form and execution awarded. The decree shall be signed by the judge and countersigned by the clerk. Immediately after the entry of such decree, the county clerk shall make a certified copy thereof, and annex the same to the tax record. He shall thereupon deliver such tax record to the county treasurer, in whose office the same shall remain except as needed in the office of the county clerk. If from any cause the hearing on said petition is not had on the day fixed in the notice therefor, the same shall stand continued from day to day during the term without the entry of any order of continuance, until disposed of, and if it shall for any reason be found impracticable to hear and determine the objections to all of the taxes specified in such petition within the time herein fixed for that purpose, then and in that case the court shall, within the time herein named, make a final decree as to all taxes to which no objections have been filed, and also those to which objections have been filed, which the court has then heard and passed upon. Such decrees shall be signed and recorded as hereinbefore provided. The court shall proceed with the consideration of the remaining taxes embraced in such petition, and objections thereto, and as soon as practicable dispose of the same

by one or more decrees and in such form as the court may determine, which shall be entered in the chancery record of decrees of such court, and the same shall describe the lands and specify the total amount of taxes, interest, and charges on each parcel thereof. The county clerk shall immediately thereafter deliver to the county treasurer a certified copy of such decree, to be kept and used as hereinbefore provided. Such copy of decree shall be annexed to the tax record and shall thereby become a part thereof. If from any cause no decree shall be made on such petition as to the taxes therein named, or any part thereof, the Auditor General shall as soon as practicable, file a new petition for decree and sale, and proceedings thereon shall be the same and a decree and sale made as herein provided.

In case a decree is given in favor of the validity of any disputed tax, and the person contesting its validity desires to appeal to the Supreme Court, he shall be allowed to do so on paying the amount of the decree to the county treasurer, within ten days after the date of such decree, who shall retain the same until the decision of the Supreme Court, and pay the same to the party interested if such tax is held invalid; if held valid, then such money shall be credited to the proper fund. By such payment the land in question shall be discharged from the lien of the tax. In case the decision is against the validity of any tax, either the county treasurer or the Auditor General shall have a right to direct an appeal therefrom to the Supreme Court on behalf of the State, but there shall be no sale for the tax held invalid, until such decision has been reversed or modified by the Supreme Court.

The proceedings where the validity of any tax is in dispute shall, where no other provision is made herein, follow the ordinary chancery practice, and the court may allow amendments as in ordinary cases. Notice shall be given of all appeals to the Supreme Court and such appeal shall be claimed, entered and bond for costs given, within twenty days after the making and entering of the decree. When the appeal is taken in behalf of the State, no bond shall be required. The judge shall, at the request of either party and on due notice, settle in proper form a case containing so much of the record and proceedings as may be necessary to the due understanding thereof by the Supreme Court, and if appeal shall be taken such case shall be transmitted to such court. An appeal as to the tax on any parcel shall not delay or affect the proceedings for the sale of any land on which there has been no appeal.

SEC. 68. If for any reason the treasurer of any county shall fail to offer the lands lying therein and included in the decree for sale for delinquent taxes thereon, then so many of such lands so included in such decree as shall not be so offered for sale, shall be considered and treated as if bid off to the State by the county

treasurer, and shall be subject to redemption and sale in the same manner and within the same time as may be provided by law in the case of lands actually bid off for the State as provided in this act. All lands bid off for the State as provided in this section shall continue liable to be taxed in the same manner as if not held as belonging to the State, and all such taxes shall be a charge and lien upon such lands as in case of other tax lands, except as hereinafter provided.

SEC. 69. Whenever it shall be satisfactorily shown to the court that any lands included in such petition as delinquent for taxes shall belong to infants, minor heirs, idiots or insane persons, without guardians or without any other means of support, the court is, in his discretion, authorized to withhold such lands from sale, until a settlement of such person can be made, and a guardian chosen or appointed to protect the rights and interests of such person: *Provided*, Such withholding shall not act to prejudice the lien of the State, county or township for such taxes, or the right to include the same in any subsequent petitions for sale as in this act provided. In case of the sale of lands belonging to any infant, idiots, minor heirs, insane or incompetent persons, if it shall appear to any court that it is necessary to protect the rights of
31 such incompetent person, to order any sale canceled, or deferred, it may so order, and in such case all proceedings may be stopped, sale canceled or action stayed until the proper proceedings can be had to protect the rights and property of such incompetent person or persons.

OF SALE BY COUNTY TREASURER.

SEC. 70. On the first Monday of December the county treasurer shall commence the sale of the lands mentioned in the decree upon which the amounts charged shall not have been paid, and shall continue the same from day to day, Sundays and other legal holidays excepted, until so much of each parcel shall be sold as shall be sufficient to pay such amounts. Each parcel described in the decree shall be separately exposed to sale for the total taxes, interest and charges, and the sale shall be made to the person offering to buy for any given tax and paying the full amount charged against such parcel, and accepting a conveyance of the smallest undivided fee simple interest therein. No greater interest in any parcel shall be sold than is sufficient to pay the amount of the tax on which the same is sold. If no person will buy for any of said several taxes and pay the balance thereof and take a conveyance of less than the entire thereof, then the whole parcel shall be offered and sold. The sale shall be at the county seat, at the office of or at such convenient place as shall be selected by the county treasurer, and shall be subject to the taxes assessed subsequent to taxes

included in the decree and for the year for which the sale is made. The county treasurer may in his discretion, require immediate payment of any person to whom any parcel of such land may be struck off, and in all cases where payment is not made in twenty-four hours after sale he shall declare the bid canceled and sell the land again; and any person to whom any parcel of land shall be so struck off, neglecting for twenty-four hours after the close of such sale to pay to the county treasurer the amount of such bid, shall forfeit to the State five times the amount of such bid and costs of suit therefor, which amount may be recovered in the name of the people of the State of Michigan in an action of debt, in any court of competent jurisdiction, and it shall be the duty of the county treasurer and prosecuting attorney of the county to prosecute for all such delinquencies and penalties without unnecessary delay. Any subsequent bid of such person made at the sale may be disregarded by the treasurer. If any parcel of land cannot be sold for taxes, interest and charges, such parcel shall be passed over for the time being, and shall, on the succeeding day, or before the close of the sale, be re-offered; and if, on such second offer, or during such sale, the same cannot be sold for the amount aforesaid, the county treasurer shall bid off the same in the name of the State, for the State, county and township in proportion to the taxes, interest
32 and charges due each. And in such case the county, township, school and other taxes assessed on the lands so bid off to the State, and the interest and charges thereon, shall remain a lien upon said lands, and any person or persons who shall afterwards purchase such lands of the State, as State tax lands, or otherwise, shall be liable for and shall pay all taxes then remaining unpaid and assessed against such lands, together with the interest thereon at the rate of eight per cent per annum, and the charges, collection fee and cost of advertising provided in section fifty-nine of this act, from the time said lands were returned delinquent for taxes until the time of such sale. The county treasurer shall enter in the proper columns of the tax record the interest in lands sold, the name and post office address of each purchaser opposite each parcel of land sold, and the word "State" opposite each parcel bid off in the name of the State. Certificates shall be given to each purchaser of the lands and interests bid off by him, showing the year and the tax for which he has purchased, and also the amount thereof, and of all other taxes paid by him at the time of such purchase, stating that he will be entitled to a deed after the period of redemption provided for in section seventy-four has expired, and that if the sale is not confirmed the money will be returned. As soon as possible after the conclusion of any sale, and within twenty days after the day named in the notice for the commencement thereof, the county treasurer shall make and file with the clerk of the court a report of such sale, therein referring to

such tax record for the particulars thereof. All sales shall stand confirmed, subject to the right of redemption provided for in section seventy-four, unless objections thereto are filed within eight days after the time limited for filing such report, without the entry of an order or further notice. The practice with reference to setting aside such sale shall be the same, so far as applicable, as in a sale in equity on the foreclosure of mortgages: *Provided*, No sale shall be set aside for inadequacy of price, except upon payment of amount bid upon such sale with interest and costs: *And Provided further*, That no sale shall be set aside after confirmation, except in cases where the taxes were paid, or the property was exempt from taxation. In such cases the owner of such lands may move the court at any time within one year after he shall have notice of such sale, to set the same aside, and the court may so order upon such terms as may be just. As soon as sales are confirmed, the county treasurer shall make full reports of the same to the Auditor General, giving a description of the property sold, the amounts for which the same was sold, and the names of the purchasers, and thereupon the Auditor General shall, after the period of redemption provided in section seventy-four has expired, execute deeds to the purchasers in such form as shall be determined by him.

All lands bid off in the name of the State shall continue
33 liable to be taxed in the same manner as if they were not the property of the State, except as hereinafter provided. If from any cause the lands or any parcel thereof decreed for sale by the Auditor General shall not be sold as advertised, it shall be the duty of the Auditor General to cause sale to be made at such other time as he may fix for that purpose, of which notice shall be published at least four weeks prior to such day, and such notice shall contain a description of the lands and the amount claimed thereon, as hereinbefore provided in the first instance. The sale and all proceedings thereon shall be the same as if made on the first day fixed therefor: *Provided*, That if any parcel sold under the provisions of this section shall also be offered at the same sale as State tax lands, the purchaser must also at the same time, become the purchaser from the State tax land list, and pay the taxes, interest and charges remaining unpaid thereon, and must pay all the remaining taxes assessed for the year for which he purchased, with interest thereon. All sales made in contravention of this requirement shall be void. The several county treasurers shall receive on such sale, only such funds as shall be receivable at the State treasury, and all moneys received at any tax sales that belong to the State shall be paid into the State treasury, on or before the first day of January next after the time of such sales, and the expenses of advertising and sale shall be paid therefrom on the warrant of the Auditor General, and the remainder shall be placed to the credit of the general fund.

SEC. 84. Any person may purchase any State tax lands by paying therefor the amount for which the same was bid off to the State, with interest on the same at the rate of eight per cent per annum from date of sale, together with the other taxes remaining a lien on such lands at the time of the purchase so made, with the interest thereon at the rate provided in this act. Upon making payment as above, such purchaser shall be entitled to and receive a certificate and a deed conveying all the right, title and interest of the State to such tax lands acquired or accrued by virtue of the original sale or sales to the State. All the provisions of law relative to deeds executed by the Auditor General on the surrender of certificates of sale made by the several county treasurers shall be applicable in making deeds for such purchases.

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II.

EXTRACTS FROM THE GENERAL TAX LAW OF MINNESOTA FOR 1878, AS AMENDED 1881.

Sec. 69. Return of tax lists to county auditor on June 1st.—Ten per cent penalty. On the first day of June, of each year, the county treasurer shall return to the county auditor the several tax lists in his hands, having compared the same with his duplicate receipts on file in the auditor's office, and written opposite the amount of each tax so receipted for, the word "paid," and the number of the treasurer's receipt given in discharge of such tax; and each tract or lot of real property against which the taxes remain unpaid shall be deemed delinquent. And thereupon a penalty of ten per cent shall immediately accrue, and thereafter be charged, upon all such delinquent taxes; and any auditor who shall make out and deliver any statement of delinquent taxes, without including such penalty therein, and any treasurer who shall receive payment of such tax without including such penalty, shall be liable to the county for the amount of such penalty. (Id. Sec. 69.)

Sec. 70. List of delinquent taxes to be filed with clerk of court by June 15. On or before the fifteenth day of June, the county auditor shall file in the office of the clerk of the district court of the county, or, if it be attached for judicial purposes, to some other county, then in the office of the clerk of such court in that county, a list of the delinquent taxes upon real estate within his country, which list shall contain a description of each piece or parcel of land on which such taxes shall be so delinquent, with the name of the owner if known, and if unknown, so stated, appearing on the delinquent list, and the amount of tax delinquent and penalty for each year opposite such description, and shall verify such list by his affidavit that the same is a correct list of taxes delinquent, for the year or years therein appearing, upon real estate in said county. The

filing of such list shall have the force and effect of filing a complaint in an action by the county against each piece or parcel of land therein described, to enforce payment of the taxes and penalties therein appearing against it, and shall be deemed the institution of such action; and the same shall operate as notice
36 of the pendency of such action. (Id. Sec. 70.)

Sec. 71. Copy of list for auditor, with notice for publication. The clerk shall, within fifteen days thereafter, make and deliver to the county auditor a copy of the list so filed, and attach thereto a notice which may be substantially in the following form:

STATE OF MINNESOTA, *County of* ..... *ss.*
District Court, ... Judicial District.

The State of Minnesota to all persons, companies or corporations who have or claim any estate, right, title or interest in, claim to, or lien upon any of the several pieces or parcels of land in the list hereto attached described.

The list of taxes and penalties on real property for the county of ..... remaining delinquent on the first (1st) day of June, ..., has been filed in the office of the clerk of the District Court of the County of ....., of which that hereto attached is a copy.

Therefore, you and each of you are hereby required to file in the office of said clerk within twenty (20) days after the date of the last publication of this notice, your answer in writing setting forth any objections or defense you may have to the taxes or any part thereof upon any piece or parcel of land described in said list, in, to or on which you have or claim any estate, right, title, interest, claim or lien, and in default thereof, judgment will be entered against such piece or parcel of land, for the taxes on said list appearing against it, and for all penalties, interest and costs."

Signed, ...
Clerk of the District Court of the County of .....
(Here insert list.)

Sec. 72. Time and manner of publishing notice and list. The county auditor shall cause said notice and list to be published once in each of two consecutive weeks, in some newspaper of general circulation, printed in the English language, and which has been regularly published for at least three months previously, in the county in which said real estate is situate, if there be one, or in the county where the proceedings are instituted, or, if there be no such newspaper published in either county, then in some newspaper published within the judicial district, the first publication of which list shall be made within fifteen* days after the delivery thereof to the auditor as provided in the preceding section.
37 The newspaper in which such publication shall be made shall be designated by resolution of the board of county commis-

*Am. 1881.

sioners of the county in which the taxes are levied, at their annual meeting in January, or at the meeting of said board in March, a copy of which resolution, certified by the county auditor, shall be filed in the office of the clerk of the court: *Provided,* That if the county commissioners shall fail to designate such paper, then it shall be designated by the county auditor. (Id. Sec. 72.)

Sec. 73. Jurisdiction of court, not affected by errors, etc. When the last publication shall have been made, the notice shall be deemed to have been served, and the court to have acquired full and complete jurisdiction to enforce against each piece or parcel of land in said published list described, the taxes, accrued penalties and costs upon it then delinquent, so as to bind every estate, right, title, interest, claim or lien, in law or equity, in, to or on such piece or parcel of land, of every person, company or corporation. And such jurisdiction shall not be in any way affected by any error in making the list filed with the clerk, nor by any error, irregularity or omission in the assessment or levy of the taxes, or in any other proceedings prior to filing the said list, nor by any mistake in copying the list for publication, nor by any mistake in publishing such list, nor by any mistake in the amount of tax in such published list appearing against any piece or parcel of land therein described. (Id. Sec. 73.)

Sec. 74. Affidavit of publication to be filed. The owner, publisher, manager or foreman in the printing-office of the newspaper in which such notice and list shall be published, shall within twenty days thereafter, (Am. 1881) make and file with the clerk an affidavit of such publication, stating the days in which such publication was made, and shall also file with the clerk three copies of each number of the paper and supplement, if any, in which the notice and list shall have appeared. The publication may be made in such newspaper, or partly in such newspaper and partly in a supplement issued therewith. (1878, c. l., Sec. 74.)

Sec. 75. Owner may appear and answer. Any person, company or corporation, having any estate, right, title or interest in, or lien upon any parcel of land embraced in said list as published, may, within twenty days after the last publication of said notice, file in the office of the said clerk, an answer, verified as pleadings in civil actions, setting forth his defense or objection to the tax or penalty against such piece or parcel of land, which answer need not be in any particular form, but shall clearly refer to the piece or parcel of land intended and set forth, in ordinary and concise language, the facts constituting the defense or objection to such tax or penalty; and if the list shall embrace the taxes for two or more years, the defense or objections may be to the taxes or penalty for one or more of such years. (Id. Sec. 75.)

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Sec. 76. Judgment where no answer is made—form—entry. Upon the expiration of twenty days from the date of the last publication

of said notice and list, the said clerk shall, the affidavit of publication being filed, enter judgment against each and every of such pieces or parcels as to which no answer shall have been filed, which judgment shall include all of such pieces or parcels, and shall be substantially in the following form:

STATE OF MINNESOTA, *County of* ....., District Court.

In the matter of the proceedings to enforce payment of the taxes on real estate remaining delinquent on the first day of June, 18...., for the county of ....., State of Minnesota.

A list of taxes on real property, delinquent on the first day of June, 18...., for said county of ....., having been duly filed in the office of the clerk of this court, and the notice and list required by law having been duly published as required by law, and no answer having been filed by any person, company or corporation, to the taxes upon any of the pieces or parcels of land hereinafter described, and more than twenty days having elapsed since the last publication of said notice and list, it is hereby adjudged and decreed that each piece or parcel of land hereinafter described as liable for taxes, penalties and costs, to the amount set opposite the same, as follows, to-wit:

Description. Amount.

And the amount of taxes, penalties, and costs to which, as hereinbefore stated, each of said pieces or parcels of land is liable, is hereby declared a lien upon such pieces or parcels of land as against the estate, right, title, interest, claim or lien of whatever nature, in law or equity, of every person, company or corporation
39 whatsoever; and it is adjudged that, unless the amount to which each of said pieces or parcels is liable be paid, each of said pieces or parcels be sold, as provided by law, to satisfy such amount to which it is liable.

Signed,

.....,

Clerk of the District Court, County of .....

Such judgment shall be entered by the clerk in a book to be kept by him, to be called the "real estate tax judgment book," and shall be dated and signed by the clerk. The judgment shall be written out on the left hand pages of such book, leaving the right hand pages blank for the entries hereinafter provided; and the same presumption in favor of the regularity and validity of the said judgment shall be deemed to exist as in respect to judgments in civil actions in said court. (Id. Sec. 76.)

Sec. 77. Proceedings when answer is filed. If answers shall be filed within the time hereinbefore prescribed as to the taxes or penalties, upon any pieces or parcels of land embraced in said list as published, such answers shall stand for trial at any general term of the district court in the county where such proceedings are pending, in session at the time when the time to file answers as aforesaid shall expire, or at the next general or special term appointed to

be held in said county; and if no general or special term shall be appointed to be held within thirty days thereafter, then the same shall be brought to trial at any general term appointed to be held within the judicial district, upon ten days' notice. It shall be the duty of the county attorney of the county in which said taxes are levied, if there be one, and, if there be none, then of the county in which such proceedings are instituted, to take charge of and prosecute such proceedings; but the county commissioners of the county in which such taxes are levied may employ any other attorney to assist such county attorney therein. At the term at which such proceedings come on for trial, they shall take precedence of all other business before the court. The court shall proceed without delay, and summarily hear and determine the objections or defenses made by the several answers, and shall dispose of all such answers, and direct judgment accordingly, at the same term, and in the trial thereof shall disregard all technicalities and matters of form not affecting the substantial merits. (1878, c. l., Sec. 77.)

40 **Sec. 78. Proceedings after hearing—judgment.** If after a hearing, the court shall sustain the taxes and penalties in whole or in part against any piece or parcel of land, judgment shall be rendered against all such pieces or parcels for the amount as to which such taxes and penalties shall be sustained against such pieces or parcels respectively, with penalties and disbursements, unless the court otherwise direct; which judgment may be substantially in the form prescribed in section seventy-six of this act, except that it shall, in addition, state that the same was rendered after answer and trial; and, after the description of each piece or parcel, shall be stated the name of the person, company or corporation answering as to such piece or parcel. If the court sustain the defense or objections to the taxes and penalties as to any piece or parcel of land, the judgment shall, after the description of the lands against which judgment is given, state that all other pieces or parcels not embraced in that or the prior judgment of the court, and which are described in the list as published, are discharged from the taxes in said list set down against such other pieces or parcels, and from all penalties; and the court may, in its discretion, award disbursements against the county levying such taxes, and in favor of the party answering to the pieces or parcels so discharged. (Id. Sec. 78.)

Sec. 79. Judgment for taxes—what defense may be made. If all the provisions of law in relation to the assessment and levy of taxes shall have been complied with, of which the list so filed with the clerk shall be *prima facie* evidence, then judgment shall be rendered for such taxes, and the penalties and costs. But no omission of any of the things by law provided in relation to such assessments and levy, or of anything required by any officer or officers to be done prior to the filing of the list with the clerk, shall

be a defense or objection to the taxes appearing upon any piece or parcel of land, unless it be also made to appear to the court that such omission has resulted to the prejudice of the party objecting, and that the taxes against such piece or parcel of land have been partially, unfairly, or unequally assessed; and in such case, but no other the court may reduce the amount of taxes upon such piece or parcel, and give judgment accordingly. It shall always be a defense in such proceedings, when made to appear by
41 answer and proofs, that the taxes have been paid, or that the property is not subject to taxation. (Id. Sec. 79.)

Sec. 80. Effect of judgment—report to supreme court—proceedings. The judgment which the court shall render shall be final, except that, upon application of the county or other party against whom the court shall have decided the point raised by any defense or objection, the court may, if in its opinion the point is of great public importance or likely to arise frequently, make a brief statement of the facts established bearing on the point, and of its decision, and forthwith transmit the same to the clerk of the supreme court, who shall enter the same as a cause pending in said court, and place the same on the term calendar of said court for the term then in session, or for the first term thereafter; and the same shall be entitled to a preference over all other business before said court, and shall be decided by said court at the term for which it shall be entered in the calendar. As soon as it shall be decided, the clerk of the supreme court shall enter the proper order, and forthwith transmit a certified copy of such order to the clerk of the proper district court: *Provided*, That such proceeding shall in no case prevent the entry of judgment in the district court, nor prevent the sale of any piece or parcel of land pursuant to the judgment of the district court, unless, at the time of applying for such statement, an undertaking, with at least two sureties, and in an amount to be approved by the judge of the district court, conditioned for the payment of the amount for which judgment shall be rendered in the district court, and the penalties and costs allowed by law, if the decision of the district court shall be affirmed, shall be filed with the clerk of the district court: *Provided, further*, That the court wherein such judgment is entered shall have power, in its discretion and for good cause shown by any person interested, to open or vacate such judgment at any time before the expiration of the period of redemption, and may allow a defense to be interposed in such case upon the grounds that the tax in question has been paid, or that the property in question was not subject to taxation, to the same extent as such defense might have been interposed before the entry of such judgment, but upon no other grounds. Application to vacate or open such judgment may be sum-
42 mary, upon such notice to the purchaser and county auditor of the proper county as the court may direct; and in case

a defense is allowed to be interposed, the case shall proceed in all respects as in defended cases under this act. (1878, c. l., Sec. 80.)

Sec. 81. Proceedings after judgment—payment before sale—redemption—payment before judgment. When any real estate tax judgment shall be entered, the clerk shall forthwith deliver to the county auditor, in a book to be provided by said auditor, a certified copy of such judgment, which shall be written on the left hand pages of such book, leaving the right hand pages blank; and if, before sale, any person wishes to pay the amount adjudged against any piece or parcel of land, the auditor shall give him a statement showing the amount so adjudged against such piece or parcel, and the amount of accrued penalty and costs; and such person may present the same to the treasurer, and pay to him such amount, and the treasurer shall thereupon give duplicate receipts for such payment, one of which shall be filed with the county auditor; and on such duplicate receipt being produced to the clerk, he shall enter on the right hand page of the real estate tax judgment book, and opposite the description of such piece or parcel, satisfaction of the judgment against the same. If, after a sale, any person shall desire to redeem, the auditor shall give him a statement showing how much is required to be paid upon such redemption; and after lands are returned delinquent by the county treasurer, and before judgment is entered, if any person shall desire to pay the taxes, penalty and costs due thereon, the auditor shall certify to the amount due, and the treasurer shall receive and receipt for the same, and he shall immediately file a duplicate of such receipt with the county auditor, who shall enter such payment on the books of his office; and if the delinquent lists have been filed with the clerk of the court, he shall immediately certify to such payment, to said clerk, who shall note the same on the delinquent list on file in his office; and all proceedings pending against such piece or parcel of land shall thereupon be discontinued. (Id. Sec. 81.)

43 **Sec. 82. Annual sale on judgments. Notice to be published.** On the third Monday of September in each year, the county auditor shall sell all pieces or parcels of land against which judgment has been rendered for the taxes of the preceding year, or years. Before making such sale, he shall give notice thereof, by posting such notice, one copy in the office of the clerk of the court where the judgment shall have been entered, one copy in the office of the county treasurer, and one copy at some conspicuous place at the county seat of said county, at least ten days before the day of sale, and by publishing such notice once in each of two successive weeks, the first publication to be at least fifteen days before the day of sale, in some daily or weekly newspaper printed in the English language, published in the county where such lands

are situated, if there be one; if there be none, then in one published in the county in which the judgment shall have been entered; or if there be none in either, then in one published in some county in the judicial district: *Provided*, That in all cases where answer has been filed as provided by law, and judgment shall have been entered, the county auditor shall give the required notice by publication and otherwise, and within thirty days after judgment has been entered, proceed to sell all property against which taxes stand charged in such judgment. The notice herein required may be substantially in the following form:

TAX JUDGMENT SALE.

Pursuant to a real estate tax judgment of the district court in the county of ....., state of Minnesota, entered the .... day of ....., in proceedings for enforcing payment of taxes and penalties upon real estate in the county of ....., remaining delinquent on the first day of June, 18....., and of the statutes in such case made and provided, I shall, on the .... day of ....., at ten o'clock in the forenoon, at ..... in the town or city of ....., and county of ....., sell the lands which are charged with taxes, penalties and costs in said judgment, and on which taxes shall not have been previously paid.

.....
Auditor of ..... County.

At the time and place appointed in such notice, the county auditor shall commence the sale of such lands, and proceed with
44 the sale thereof from day to day, for six consecutive days, or until the whole shall have been sold. (1878, c. l., Sec. 82.)

BRIEF FOR PLAINTIFF IN ERROR.

IN REPLY

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

Office Supreme Court,
FILED.
JAN 31 190
JAMES H. McKEN

No. 177.

JOHN M. LONGYEAR, PLAINTIFF IN ERROR,

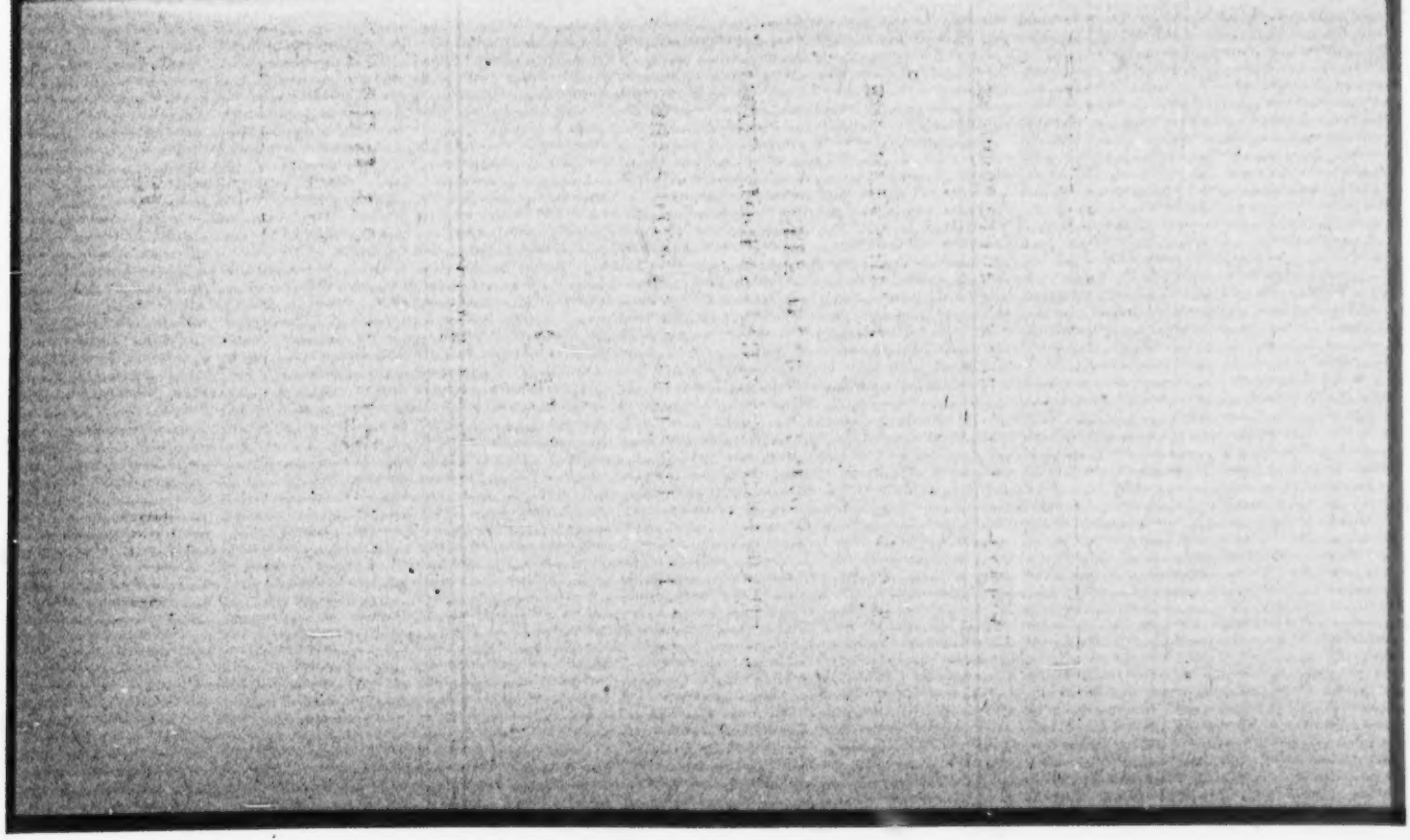
vs.

WILLIAM TOOLAN AND ALEXANDER McMILLAN,
DEFENDANTS IN ERROR.

EDWARD CAHILL, *Attorney for Plaintiff in Error.*

IN ERROR TO THE SUPREME COURT OF MICHIGAN.

Robert Smith Printing Co., Lansing, Mich.



UNITED STATES OF AMERICA.

IN THE SUPREME COURT.

JOHN M. LONGYEAR, Plaintiff in Error,

vs.

WILLIAM TOOLAN and ALEXANDER McMILLAN, Defendants in Error.

1 *Brief for Plaintiff in Error, in Reply.*

I have carefully read the brief submitted by counsel for defendant in error, and the cases cited by him, but I have found nothing that leads me to retract anything of my original contention that, "except in Michigan, no Court has ever held that notice by publication under a statute like the Michigan statute, was equivalent to personal service of process upon the resident owner of land."

It is true, that in many of the cases cited by counsel language is to be found wheh, if read without reference to the facts of the particular cases, would support the views contended for by defendant in error. But in no case do I find the facts and the law coinciding to decide the exact question raised in this case.

In most of the cases cited, the record shows that the suit or proceedings was a direct one either to collect or to contest the collecion of a tax. By that very proceeding the party complaining of the tax was having his day in court. How, then, was it open to him to claim that he was being deprived of his property without an opportunity to be heard? Certainly a party so situated could not call upon a court to pass upon the constitutionality of a law which,

admittedly, was not injuring him. The following cases were of this character:

2 Lent vs. Tillson, 140 U. S. 316.
Paulson vs. Portland, 149 U. S. 30.
King vs. Portland, 184 U. S. 61.
Glidden vs. Harrington, 189 U. S. 255.
Hagar vs. Reclamation District, 111 U. S. 708.
Ky. Ry. Tax Cases, 115 U. S. 322.
Cass Farm Co. vs. Detroit, 181 U. S. 396.
Detroit vs. Parker, 181 U. S. 399.
Kelley vs. Pittsburgh, 104 U. S. 80.
Bells Gap R. R. Co. vs. Penn., 134 U. S. 232.
Davidson vs. New Orleans, 96 U. S. 97.

The case of Leigh vs. Greene, 193 U. S. 92, involved nothing more than the foreclosure of a lien upon real estate which, under a Nebraska statute, was regarded as in the nature of a mortgage. The statute provided for service of process, except when the owner of the land was unknown, when it provided that the action should be against the land and the service the same as against non-residents. Suits against non-residents, unknown, absent or concealed defendants, are **ex necessitate rei** allowed to be prosecuted without personal service of process. They are well recognized exceptions to a general rule.

The learned justice who wrote the opinion in that case had in mind the statute, the general rule, and the exception to it and his language must be construed with reference thereto. When so considered the case does not support the contention of counsel for defendant in error.

In Paulsen vs. Portland, 149 U. S. 30, the suit was not only a direct proceeding to contest the collection of the tax, but attention is called in the opinion to the fact that the ordinance under which the tax was imposed, named a place and stated time when hearings could be had by all interested, and the court expressly reserved any opinion as to the sufficiency of the notice.

In Turpin vs. Lemon, 187 U. S. 58, no question of notice was in-

volved. The point in the case was that years after a piece of land had been sold for taxes the owner filed a bill to set aside the
3 sale upon the ground that it nowhere appeared in the return of the sale made by the sheriff for those taxes, that certain requirements of the statutes were not actually followed and it was held that the bill failed to show that the complainant had suffered any injury or that the forms of law were not actually observed.

It is unquestionably true that a government may adopt summary proceedings of a purely administrative character for the collection of its revenues and that a resort to judicial proceedings is unnecessary.

But it is equally true that if such summary proceedings are adopted, they are never **conclusive** of the rights of a property owner until adjudicated to be so in a judicial proceeding to which he has been duly summoned as a party and been given an opportunity to show if he can, that the tax was for an unlawful purpose and, therefore, a mere arbitrary exaction under the form of taxation; that his property had not been fairly valued for taxation and that he had been given no opportunity to be heard upon the question of such valuation, or that any of the forms of law had not been observed in the attempt to impose the tax. That is the settled law of Michigan and of this country. (See cases cited in my original brief, pp. 4 and 5.)

But, if a government sees fit to resort to judicial proceedings for the collection of its revenues and attempts to give such proceedings the **conclusive** character which belongs to the judgments and decrees of courts, it ought not to be permitted to do so without conforming to those rules of courts which law and usage have established as essential to the protection of private rights.

By the general law of the land, no court is authorized to
4 render a judgment or decree against any one **or his estate** until after due notice by service of process to appear and defend.

Hollingsworth vs. Barbour, 4 Peters, 466.
Windsor vs. McVeigh, 93 U. S. 274.
Noyes vs. Hillier, 65 M. 636.
Prince vs. Clark, 81 M. 167.
Grand Rapids vs. Powers, 89 M. 94.
Caledonia Township vs. Rose, 94 M. 216.

I regret that I am called upon to correct two clerical errors in my former brief.

On page 1, paragraph 3, first line, "defendants below" should read "plaintiffs below."

Page 7, line 1, "Davidson vs. Board of Administrators of New Orleans" should be "96 U. S. 98" instead of "97 U. S. 108."

EDWARD CAHILL,
Attorney for Plaintiff in Error.

BRIEF FOR DEFENDANTS IN ERROR.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

Office Supreme Court, U. S.
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No. 177.

JOHN M. LONGYEAR, PLAINTIFF IN ERROR,

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WILLIAM TOOLAN AND ALEXANDER McMILLAN.

CHARLES W. NICHOLS, *Attorney for Defendants in Error.*

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

Robert Smith Printing Co., Lansing, Mich.

THE SUPREME COURT
OF THE UNITED STATES.

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1 JOHN M. LONGYEAR, Plaintiff in Error,

vs.

WILLIAM TOOLAN and ALEXANDER MCMILLAN, Defendants in Error.

Brief for Defendants in Error.

This was an action of ejectment by the defendants in error to recover a certain tract which the defendants in error claimed by virtue of a deed from the State of Michigan on a sale of the land to the State for taxes assessed against the property.

The defendants in error, plaintiffs in the ejectment case, recovered the land, and plaintiff in error has come to this Court contending that the statutes of Michigan providing for the condemnation and sale of land for the non-payment of taxes assessed against it is unconstitutional because the substituted service of the notice provided by statute does not give the owner of the land sufficient notice of the judicial proceedings had to obtain a decree for the sale of the land. The statute provides for service by publication only and therefore the plaintiff in error, he contends, was not divested of his title by any judicial proceeding that conformed to the constitutional requirements of due process of law.

Appellant in his brief contends that there are no authorities holding that service by publication on a resident of the State is sufficient where the statute does not fix the precise date when the land owner shall appear and defend his rights against the proceedings to sell his land for the non-payment of the taxes assessed against it.

We must disagree with this claim, and, in our opinion, this
2 Court has decided that a law which provided only for substituted service, where the tax could be tested by judicial proceedings, was due process of law within the 14th Amendment.

Lent vs. Tillson, 140 U. S. 316.

This Court has also held in administrative proceedings that the law complied with the 14th Amendment even though the statute did not fix the time and place of hearing, and the only notice was by publication, which notice fixed the time and place of hearing.

King vs. Portland, 184 U. S. 61.
Glidden vs. Harrington, 189 U. S. 255.
Paulson vs. Portland, 149 U. S. 30.

We contend also that there are no cases holding that such notice by publication is not sufficient even though the statute does
3 not fix the exact date on which such proceedings shall be had.

What, then, are the necessary elements in a proceeding to assess, levy and enforce collection of a public tax that shall be within the rules of due process of law?

The purpose of due process of law is to prevent the arbitrary exercise of authority and to compel the State to perform its sovereign functions under general laws applicable alike to all and under reasonable safeguards protecting the rights of its citizens.

The classes of cases involving the question of due process of law are such as involve life and liberty; the taking of property by one person from another; the taking of property by the State in the process of taxation.

This Court has recognized these distinctions and stated the rules to be that where life and liberty are involved, due process requires that there be a regular course of judicial proceeding which imply that the party to be affected shall have notice and an opportunity to be heard; also, where title or possession of property is involved. But where the taking of property is the enforcement of a tax, the proceeding is necessarily less formal, and whether notice to him is at all necessary may depend upon the character of the tax and the manner in which its amount is determinable.

Hagar vs. Reclamation Dis. 111 U. S. 708.
Ky. R. R. Tax Cases, 115 U. S. 322.

The levying and collection of taxes is not necessarily a judicial

proceeding, and the fact that the State has permitted them to some extent to be administered by the courts does not thereby make it necessary that such administration should be according to strict judicial technicalities.

Murray's Lessee vs. Hoboken Land Co., 18 How. 282.
Black on Tax Titles, Sec. 166.

The assessment and collection of taxes is legislative and ad-
4 ministrative, saving only the fixing of a valuation upon the property assessed.

Hagar vs. Reclamation Dis. 111 U. S. 710.

It was not the intention of the Fourteenth Amendment to subvert the systems of the state pertaining to general and special taxation and the Federal Courts ought not to interfere when what is complained of is the enforcement of the settled laws of the State applicable to all persons in like circumstances and conditions, but only when there is some abuse of law amounting to confiscation of property or deprivation of personal rights.

Cass Farm Co. vs. Detroit, 181 U. S. 396.
Detroit vs. Parker, 181 U. S. 399.

Taxes have not as a general rule in this country since its independence, nor in England before that time, been collected by regular judicial proceedings. The necessities of government, the nature of the duty to be performed, and the customary usages of the people, have established a different procedure, which in regard to these matters is and always has been regarded as due process of law.

[illegible]ley vs. Pittsburg, 104 U. S. 80.

The necessity of revenue for the support of government does not admit of the delay attendant upon proceedings in a court of justice, and they are not required for the enforcement of taxes or assessments. In judging what is due process of law respect must be had to the cause and object of the taking, whether under the

The process of taxation does not require the same kind of a notice as is required in a suit at law or even in a proceeding
7 under the power of eminent domain. It involves no violation of due process of law when it is executed in accordance to customary forms and established usages or in subordination to the principles which underlie them.

Bells Gap R. R. Co. vs. Penn., 134 U. S. 232-239.

"Probably there are few governments which do or can permit their claims for public taxes, either on the citizens or the officer employed for their collection or disbursement, to become subject to judicial controversy, according to the course of the law of the land. Imperative necessity has forced a distinction between such claims and all others, which has sometimes been carried out by summary methods of proceedings, and sometimes by systems of fines and penalties, but always in some way observed and yielded to."

Murray's Lessee vs. Hoboken Land Co., 18 How. 282.

This Court has attempted to define what would be due process of law. "That whenever by the laws of a state or by state authority a tax, assessment, servitude or other burden is imposed upon property for the public use, whether it be of the whole State or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed, in the ordinary courts of justice with such notice to the person or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment cannot in such case be said to deprive the owner of due process of law, however obnoxious it may be to other objections."

Davidson vs. New Orleans, 96 U. S. 97-8.

"It is found from the experience of ages that the payment of taxes has to be enforced by summary and stringent means against a reluctant and often adverse sentiment, and to do this suc-
8 cessfully other instrumentalities and other modes of procedure are necessary than those which belong to courts of justice."

State Ry. Tax Cases, 92 U. S. 614.

It was well remarked in the above case that the heavy burden of taxation by the United States and the State governments and the several municipalities has resulted in the resort to every possible expedient to evade its force.

Id. 613.

The astuteness of judicial refinement should not be carried to an extent that will render tax laws inoperative and add to the difficulties of collecting taxes.

De Treville vs. Smalls, 98 U. S. 525.

In judicial proceedings the law of the land requires a hearing before condemnation and judgment before dispossession; but when property is appropriated by the government to public uses, or when the legislature interferes to give direction to its title through remedial statutes, different considerations from those which regard the controversies between man and man must prevail, different proceedings are required, and we have only to see whether the interference can be justified by the established rules applicable to the special case. Due process of law in such particular case means such an exercise of the powers of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs.

9 Cooley on Constitutional Limitations, 356.
Cooley on Taxation, 47 to 53.

The principles to be deduced from these authorities is well drawn by Mr. Justice Day in the following language:

"Where the State seeks directly or by authorization to others to sell lands for taxes upon proceedings to enforce a lien for the payment thereof, it may proceed directly against the land within the jurisdiction of the court and a notice which permits all interested who are so minded to ascertain that it is to

be subjected to sale to answer for taxes and to appear and be heard, whether to be found within the jurisdiction or not, is due process of law within the 14th Amendment to the Constitution."

Leigh vs. Green, 193 U. S. 92.

"Proceedings of this nature are not usually proceedings against parties; nor, in the case of lands or interests in lands belonging to persons unknown, can they be. They are proceedings which have regard to the land itself rather than to the owners of land, and, if the owners are named in the proceedings, and personal notice is provided for, it is rather from tenderness to their interests, and in order to make sure that the opportunity for a hearing shall not be lost to them than from any necessity that the case shall assume that form as in all other cases of proceedings in rem if the law makes provision for the publication of a notice in a form and manner reasonably calculated to bring the proceedings to the knowledge of the parties who exercise ordinary diligence in looking after their interests in the lands it is all that can be required."

Cooley on Taxation, 527.

10 ARGUMENT.

The theories of the law and principles announced and adopted in the foregoing cases, when applied to the laws of Michigan in which the tax lien in the case under consideration was foreclosed will fully support the constitutionality of those laws.

When considered in connection with their public character and the necessities of the State in collecting its revenue and due practical administration of those laws, it is certain that the State has afforded to her citizens all reasonable safeguards and has not been arbitrary, oppressive or unjust.

The laws of Michigan in 1889, Act No. 195, provided for personal service of process in proceeding to foreclose tax liens, but was soon found to be impracticable in this respect and was speedily repealed.

The lands in this case were listed for taxation in May, 1891, under laws of 1889, and the sections referred to are shown in the appendix to this brief. Sec. 15.

A board of review for revising the valuations and the lands assessed, is provided and the statute fixes the time and place when the owner can appear and make objections to his assessment. Sections 18 and 19.

This law fixes the time and place for hearing before this board and it is conceded that under the decisions of this Court the fixing of the time and place by statute is sufficient.

The tax was spread in Nov., 1891, under the laws of 1891, Act 200, and became a lien on this land December 1st. Sec. 27.

The township treasurer was required to remain in his office each Friday during December to receive taxes, and they may be paid to him up to February first, following. Sections 32-33.

The unpaid taxes are then returned to the county treasurer,
11 and they may thereafter be paid at any time to the county treasurer. Sections 45 and 47.

The proceedings to foreclose were taken under Laws of 1893, Act 206.

When the taxes remained unpaid for one year after July 1st after their return to the county treasurer they became subject to sale. Sec. 60.

As soon as practicable after June first each year the Auditor General shall prepare and file with the county clerk where the lands are situated a petition addressed to the Circuit Court praying a decree to sell the lands, etc. Section 61.

This shall be presented to the Circuit Judge by the county clerk, who shall make an order fixing a time for the hearing of such petition and directing all parties to appear and file objections. Sec. 62.

Before July 1st the Auditor General shall designate the newspaper in which notice of such order shall be published. Sec. 63.

The order of hearing and notice to appear and defend shall be published for four successive weeks next before the day of hearing. Sec. 66.

If unable to file objections on the day appointed, he may have five days additional time. Sec. 66.

Peninsular Savings Bank vs. Ward, 118 Mich. 87.

It would seem that the opportunities given the owner to pay and to defend against the tax are ample and that his rights are fully

safeguarded. He has a year and a half in which to pay the
12 tax. He knows that soon after June first a petition will be filed with the Court of the county to sell his land and that he can defend against it. He knows that before July first the Auditor General must designate a paper in which to publish the notice, and that the notice must be published four weeks.

The owner then knows that his land will be taxed and when, he knows when and where to object to his assessment. He knows when and where to pay them and he has a year and a half to do so. He knows when and where a petition will be filed and an order made for him to appear and defend. He can learn by application to the county clerk or he can apply to the Auditor General and learn in what paper or in what manner notice is given of the hearing. The Court shall give time to hear objections and an appeal may be had. Sec. 67. Surely any man exercising reasonable diligence in his business affairs may know when and where to appear and defend. If he exercises as much care in protecting his own property as the State has in safeguarding his rights he can certainly protect himself. He may after this defend against the sale, for the decree will be invalid if the taxes were paid or the land not subject to taxation. Sec. 70.

And he shall have one year thereafter to redeem. Sec. 74.

Certainly no reasonable man who is willing to bear his just share of the public burdens can complain of these laws as arbitrary, oppressive and unjust.

The methods provided to collect the tax are surely applicable to the circumstance of the case. They apply to all citizens alike
13 and they are recognized as customary, necessary and reasonable. They have been in operation for fifteen years and they have not been found to be unjust, arbitrary or oppressive. There has been no demand for its repeal and the two million citizens of Michigan, who are law abiding and willing to pay the expense of the protection afforded them by the government of the State, find no fault with the means afforded them of protecting their property.

The law has been held to be valid by the courts of Michigan.

Cole vs. Shelp, 98 Mich. 58.
Ball vs. Ridge Copper Co., 118 Mich. 7.
In re Wiley, 89 Mich. 58.

Muirhead vs. Sands, 111 Mich. 487.
Hooker vs. Bond, 118 Mich. 255.
Toolan vs. Longyear, 114 Mich. 55.

It is doubtful if personal service would in its practical operations as effectually protect the citizen as do the present methods which requires him to exercise some diligence in watching his property. If personal service were required, he would depend upon that, but publication would be necessary in the case of unknown owners. Both owners and taxing officers are constantly changing and it often occurs that those officers are ignorant of the ownership of property when the owners even live in the same taxing district. The requiring of personal service would put an unnecessary burden and expense alike on the State and the taxpayer, and is an impracticable method as witness the repeal of that provision at the first session of the legislature after its practical operation had been tested. It opens the way to multiplied technicalities to which the unwilling taxpayer may resort in his efforts to thwart the State in collecting its revenue and to which governments ought not to be com-
14 pelled to submit; and it would be equally impracticable to fix a certain date on which all courts should sit to hear defenses.

CHARLES W. NICHOLS,
Lansing, Mich.
Attorney for Defendants in Error.

SEC. 15. On or before the third Monday of May
15 in each year, the supervisor shall make and complete an assessment roll, upon which he shall set down the name of every person liable to be taxed for personal property in his township, and also a full description of all the real property liable to be taxed in such township. If the name of the owner or occupant of any such tract or parcel of real property is known, he shall enter the name of such owner or occupant opposite to the description thereof; in all other cases the real property described upon such roll shall be assessed as owner unknown. Each description shall show the number of acres contained in it, as determined by the supervisor. It shall not be necessary for the assessment roll to specify the quantity of land comprised in any town, city or village lot. The supervisor shall estimate, according to his best information or judgment, the true cash value of every parcel of real property, and set the same down opposite such parcel. He shall also estimate the true cash value of all the personal property of each person, and set the same down opposite the name of such person. In determining the property to be assessed and in estimating such values he shall not be bound to follow the statements of any person, but shall exercise his best judgment. Property assessed to one other than the owner shall be assessed separate from his property and shall show in what capacity it is assessed to him. Two or more persons not being copartners, owning personal property in common, may each be assessed severally for his portion thereof. Undivided interests in land owned by tenants in common, or joint tenants not being copartners, may be assessed to the owners thereof.

SEC. 18. At the annual township meeting, held (on) the first Monday of April in the year eighteen hundred and ninety, there shall be elected by ballot, on the regular township ticket, two suitable electors of the township to serve as members of the board of
16 review; one of whom shall be elected for one year, and one for two years, and annually thereafter one member shall be elected for two years, who shall take the constitutional oath of office as other township officers. The supervisor and the two electors so elected shall constitute the board of review for such township. The township board may temporarily fill any vacancy which shall occur in the membership of said board of review. A majority of said board of review shall constitute a quorum for the transaction of business, but a less number may adjourn from day to day, and a majority vote of those present shall decide all questions. On the Tuesday next following the third Monday of May, the board of review of each township shall meet at the office of the supervisor; at which time the supervisor shall submit to said board the assessment

roll for the current year, as prepared by him, and the said board shall proceed to examine and review the same, and during that day, and the following day if necessary, said board, of its own motion, or on sufficient cause being shown by any person, shall add to said roll the names of persons, the value of personal property, and the description and value of real property liable to assessment in said township, omitted from said assessment roll; they shall correct all errors in the names of persons, in the descriptions of property upon said roll, and in the assessment and valuation of property thereon, and they shall cause to be done whatever else may be necessary to make said roll comply with the provisions of this act. The board shall pass upon each valuation, and enter the valuation as fixed by it in a separate column. The roll as prepared by the supervisor shall stand as approved and adopted as the act of the board of review, except as changed by a vote as herein provided. If for any cause a quorum does not assemble during the days above mentioned, the roll as prepared by the supervisor shall stand as if approved by the board of review

SEC. 19. Said board of review shall also meet at the office
17 of the supervisor on the fourth Monday in May, at nine o'clock in the forenoon, and continue in session during the day and the day following. Such board shall continue its sessions at least six hours each day, and at the request of any person whose property is assessed thereon, or of his agent, and on sufficient cause being shown, shall correct the assessment as to such property in such manner as in their judgment shall make the valuation thereof relatively just and equal. To that end said board may examine on oath the person making such application, or any other person touching the matter. Any member of said board may administer such oath. After said board shall complete the review of said roll, a majority of said board shall endorse thereon and sign a statement to the effect that the same is the assessment roll for said township for the year in which it has been prepared and approved by the board of review. Such statement to be in the following form, viz.:

Assessment roll of the township of ————, for the year 18—, as approved by the board of review.

Dated, ————.

————,
————,
————,
Board of Review.

Upon the completion of said roll, and its endorsement in manner aforesaid, the same shall be conclusively presumed by all courts and tribunals to be valid, and shall not be set aside except for causes hereinafter mentioned. The omission of such endorsement shall not affect the validity of such roll.

LAWS OF 1891. ACT 200.

SEC. 27. Each supervisor shall proceed to assess the taxes
18 apportioned to his township, according and in proportion to the valuations entered by the board of review in the assessment roll of the township of the year: *Provided,* That if the board of review make no such entry then on the valuation therein as entered by the supervisor. For the purpose of avoiding fractions in computation, the supervisor may add to the amount of the several taxes to be raised not more than one per cent; said excess shall belong to the contingent fund of the township; such taxes shall be entered in separate columns as follows: All school taxes and the one mill tax in one column, highway taxes in another, township taxes in another, county taxes in another, and the State taxes in another column, and if other taxes are at any other time required to be raised, they shall be placed in separate columns. The total of such taxes assessed against any one valuation or parcel of property shall be added and carried out in the last column upon the right hand side of such roll. The taxes thus assessed shall become at once a debt to the township from the persons to whom they are assessed, and the amounts assessed on any interest in real property shall, on the first day of December, become a lien on such real property, and the lien for such amounts, and for all interest and charges thereon, shall continue until payment thereof. And all personal taxes shall also be a lien on all personal property of such persons so assessed from and after the first day of December in each year, and shall take precedence of any sale, assignment or chattel mortgage, levy or lien on such personal property, executed or made after said first day of December, except where such property is sold in the regular course of trade. Before the supervisor shall deliver such roll to the township treasurer, he shall carefully foot the several taxes therein levied, and shall give to the township clerk of his township a statement thereof and such clerk shall immediately charge the amount of such taxes to the township treasurer.

SEC. 32. On receiving such tax roll, the township treasurer shall proceed to collect such taxes. He shall remain in his office at some convenient place in his township, on every Friday in Decem-
19 ber thereafter, from 9 o'clock a. m. to 5 o'clock p. m. to receive taxes. *Provided, however,* That he shall receive taxes upon any week day when they may be offered, and on all sums voluntarily paid before the first day of January of the succeeding year, he shall add one per cent for collection fees, and upon all taxes paid on or after said first day of January he shall add four per cent. In case he is justly apprehensive of the loss of any personal tax, he may take steps to enforce its collection at any time, and if compelled to seize property or bring suit in December, or before the first day of January, may add four per cent for collection fees.

SEC. 33. All taxes shall be collected before the first day of February, unless the time for collection is extended. The township board of any township, or the common council of any city may extend such time not exceeding one month. When such an extension is made, the township clerk shall immediately notify the county treasurer thereof. In case of an extension, the warrant annexed to the tax roll shall continue in force during the time extended, and the (bonds) bond of the township treasurer shall not be invalidated by any such extension. But no collector or township or city treasurer, shall receive the benefit of such extension until he shall have paid over to the county treasurer all State and county taxes collected.

SEC. 45. The county treasurer shall thereupon indorse the fact of such settlement on the bond of the township treasurer, which indorsement shall operate as a discharge of the treasurer and his sureties from the obligation thereof, unless the return of such treasurer is incorrect, in which case such bond shall continue in force, and such treasurer and his sureties shall be liable thereon for all damages occasioned by such incorrect returns; and the township treasurer shall immediately deposit his tax roll with the county treasurer, who shall file and preserve the same in his office, and which said roll, or a duly certified copy thereof shall, for all purposes, in all courts, suits and proceedings, be taken, held and used as evidence, in the same manner and with like effect as the original roll. The county shall give the township treasurer a statement of all the personal taxes which remain uncollected, taken from the return of the latter, with a warrant authorizing him or his successor to collect them according to law, and thereafter the township treasurer or his successor shall have the same power to collect such taxes as under his original warrant.

SEC. 47. After the return of lands for unpaid taxes, the county treasurer is authorized to receive the amounts of the several taxes or any of them due, and the board of supervisors in each county may authorize notice to be given to all delinquent taxpayers so far as known.

LAWS OF 1893. ACT 206.

SEC. 60. All lands which have been or may hereafter be returned to the Auditor General as delinquent for taxes, and upon which any taxes are now or shall hereafter remain unpaid, after their return to the Auditor General under the provisions of this act, or to the several county treasurers of the State under the provisions of Act No. 200 of the Public Acts of 1891, for the period of one year or more, shall be subject to disposition, sale and redemption for the enforcement and collection of such tax liens, in the method and manner as hereinafter provided. In the disposition and sale of such delinquent tax lands the people of the State of Michigan shall be deemed to

have a valid lien upon such lands, with all the rights to enforce the same as a preferred or first claim upon such lands, and the rights and choses to enforce such lien shall be held and construed by all the courts of this State as the prima facie rights of the State, and shall not be set aside or anulled except in the manner and for the causes herein specified.

OF THE NOTICE AND LISTS OF LANDS TO BE SOLD.

SEC. 61. As soon as practicable after the twelfth day of June, eighteen hundred and ninety-three, and as soon as practicable after the first day of June in each year thereafter, the Auditor
21 General shall prepare and file in the office of the county clerk in each county in which lands are to be sold under the provisions of this Act, a petition addressed to the Circuit Court for said county in chancery, stating therein by apt reference to the lists or schedules annexed thereto, a description of all lands in such county upon which taxes have remained unpaid for more than one year prior to the first day of May, 1893, or the first day of May of the year in which the petition is filed, and the total amount of such taxes, with interest computed thereon to the time fixed for the sale thereof, and a collection fee of four per cent extended separately against each parcel of land, and he shall include with and add to such total amount against each parcel seventy cents for the cost of advertising and other expenses of sale. Such petition shall pray a decree in favor of the State of Michigan against said land for the payment of the several amounts so specified therein, and in default thereof that such lands be sold. It shall be signed by the Auditor General and need not be otherwise verified, and shall be deemed equivalent to a bill in chancery to enforce the lien for such taxes, interest and charges, averring their validity, that they have not been paid, and praying for a sale to pay such lien. Lands hereafter bid off in the name of the State and thus held shall not be included in such petition. The petition shall be in a substantial record book, with the lists of lands and taxes annexed following the same therein. Such record shall be ruled with appropriate columns, one containing a description of the lands, with columns for the total amount of taxes, interest and charges claimed due on each parcel of land opposite thereto; also with blank columns, one with heading, "Parts of descriptions paid before sale or withheld;" another, "By whom paid;" another, "Amount paid before sale;" another, "Amount decreed against lands;" another, "Special orders;" another, "Interest in each parcel sold;" another, "Name of purchaser;" another, "Address of purchaser;" another, "Number of certificate;" an-
22 other, "Remarks." The Auditor General may add such other columns as he may find necessary. The word petition shall be construed to include the lists annexed thereto. Said record shall

be called, "tax record." Parts of descriptions of lands upon which taxes are paid before sale, or which are withheld from sale, the amount paid on taxes before sale, the amount of taxes, interest and charges decreed against lands, special orders made by the court relating to any parcel of land or tax, the interest on each parcel of land sold, the name of each purchaser and his address, and the number of certificate of sale shall be entered in said record under their appropriate headings, opposite to the description of lands affected thereby.

SEC. 62. It shall be the duty of the county clerk, on the filing of the said petition, to at once present the same to the circuit judge of the county in which said delinquent tax lands are situate, and it shall be the duty of said circuit judge to make an order in the form herein prescribed, which order, when so made and signed by the circuit judge, shall be countersigned by the county clerk as register in chancery, and recorded by him in the proper books of his office, and thereupon it shall be the duty of said county clerk to immediately make a true copy of said order, and transmit the same to the Auditor General. Said order shall be in substantially the following form:

STATE OF MICHIGAN, *County of* ..... *ss.*

The Circuit Court of the county of ....., in chancery.

In the matter of the petition of the State of Michigan for the sale of certain lands for taxes assessed thereon.

On reading and filing the petition of the Auditor General of the State of Michigan, praying for a decree in favor of the State of Michigan, against each parcel of land therein described, for the amounts therein specified, claimed to be due for taxes, interest and charges on each such parcel of land, and that such lands be
23 sold for the amounts so claimed by the State of Michigan.

It is ordered that said petition will be brought on for hearing and decree at the ..... term of this court to be held at ..... in the county of ....., State of Michigan, on the ..... day of ....., A. D. 18.., at the opening of court on that day, and that all persons interested in such lands or any part thereof, desiring to contest the lien claimed thereon by the State of Michigan, for such taxes, interest and charges, or any part thereof, shall appear in said court and file with the clerk thereof acting as register in chancery, their objections thereto, on or before the first day of the term of this court above mentioned, and that in default thereof the same will be taken as confessed and a decree will be taken and entered as prayed for in said petition. And it is further ordered that in pursuance of said decree the lands described in said petition for which a decree of sale be made, will be sold for the several taxes, interest and charges thereon as determined, by such decree, on the first Monday in December thereafter, or on the

days subsequent thereto as may be necessary to complete the sale of said list and each and every parcel thereof, at the office of the county treasurer, or at such place as shall be selected by him at the county seat of the county of ....., State of Michigan.

Witness the Hon. ....., circuit judge, and the seal of said Circuit Court of ..... county, this ..... day of ..... A. D. 18..

Countersigned, ...

.....*Register.* *Circuit Judge.*

SEC. 63. The newspapers in which such order and petition are to be published shall be designated by the Auditor General on or before the first day of July in each and every year, and not afterwards, unless the publisher of the paper so designated shall fail to accept such designation within fifteen days after the same
24 is made, or shall refuse or neglect to publish and print such order and petition, or unless from any other cause, such publication shall become impracticable; in which case the Auditor General shall designate some other paper for that purpose before the time limited for commencing such publication.

SEC. 66. The Auditor General shall cause a copy of said order and a copy of said petition to be published, at least once in each week for four successive weeks next prior to the time fixed for the hearing thereof, in some newspaper published and circulating in the county where such petition is filed, to be selected by the Auditor General. Said order and petition shall both be published in the same newspaper, the order immediately preceding the petition: *Provided*, In such petition it shall be sufficient to print against each parcel the "amount of taxes," "interest," "charges," "total" due on each. The cost of such publication shall be paid by the State on the warrant of the Auditor General, not exceeding forty cents for each parcel of land advertised. The proprietor of such paper shall furnish the proper county treasurer and Auditor General each with two copies of each issue containing such publication, and it shall be the duty of such Auditor General and treasurer to carefully examine the notices published and see if they are correct. Any person familiar with the facts may make an affidavit as to the publication required. The auditor General shall not pay for any such publication until satisfied that it has been made according to law. The publication of the order and petition aforesaid shall be equivalent to a personal service of notice on all persons who are interested in the lands specified in such petition, of the filing thereof, of all proceedings thereon, and of the sale of lands under the decree, and shall give the court jurisdiction to hear such petition, determine all questions arising thereon, and to decree a sale of such lands for the payment of all taxes, interest and charges thereon. The Circuit Court in

chancery shall have jurisdiction to hear, try and determine
25 the matters alleged in such petition, even though the amount involved therein be less than one hundred dollars. It shall be the duty of the prosecuting attorney to prosecute all such proceedings on the part of the State. If he shall refuse, neglect or be unable to do so, the court shall appoint some competent person to take charge of and prosecute the same, who shall be paid by the county. The board of supervisors may employ some competent person to prosecute such proceedings or assist therein. Proof of the publication of the order and petition herein required shall be filed in the office of the county clerk before any final order is made. Any person against whom a decree has not been taken desiring to contest the validity of any tax shall file in writing his objections thereto with the clerk of the county, on or before the day fixed in said notice for the hearing of such petition, and shall not be allowed to make any objection not therein specified. If within the first five days after the day fixed in such notice for the hearing of such petition it shall be made to appear to the court that any person has been prevented from filing objections to any tax, without fault on his part, such further time may be granted for that purpose as may seem proper, not exceeding five days. The court shall give precedence to the hearing of such petition over all other business, shall examine, consider and determine the matters therein stated and objections made in a summary manner without other pleadings, and make a final decree thereon as the right of the case may be. The taxes specified in the petition shall be presumed to be legal and a degree be made therefor unless the contrary is proved. Evidence shall be taken in open court. All oral testimony shall, at the request of any person interested, be written down and filed. The court may make such orders from time to time as may be necessary to facilitate the proceedings and shall decide all questions as to the admissibility of evidence, and the decision so made shall be final and not
26 subject to review or appeal. If the lands of two or more persons have been assessed together, the court may, if practicable, separate the same and apportion to each parcel its just proportion of the taxes, interest and charges. If any tax shall be found illegal it shall be rejected. If a part of any tax shall be found to be illegal, such part shall be set aside and the remaining tax shall be decreed valid. The total amount of taxes, interest and charges, as fixed by the court, shall be entered by the register of the court opposite each parcel of land in the column of said record under the heading, "Amount decreed against lands." If the court shall make any order setting aside the taxes on any parcel of land, or any part thereof, or any special order relating to any particular parcel of land, or taxes thereon, a brief entry of such order shall be made upon said record opposite such land or tax, which shall be signed by the judge of the

court, either by his full name or initials, and such entry shall have the same effect as if made and entered as a part of the final decree. At least ten days prior to the time fixed for the sale of such lands, the court shall make a final decree in favor of the State of Michigan for such taxes, interest and charges as shall be valid, and determine the total amount thereof chargeable against each parcel of land, and shall order and decree that such several parcels of land or so much of each as shall be necessary to satisfy the amount fixed by such decree, shall severally be sold as the law directs. Such decree shall be considered as a several decree in favor of the State of Michigan against each parcel of land for each tax included therein. The court may decree such costs against a person contesting any tax as may be equitable, if the tax, or any part thereof, which remains unpaid, be adjudged valid.

SEC. 67. Such final decree shall be entered in the chancery record for recording decrees of such court, have the usual caption for decrees, and shall be substantially in the following form:

"In the matter of the petition of the State of Michigan for
27 the sale of certain lands for taxes assessed thereon. The said petition and the matters therein stated, and the objections filed to certain taxes therein claimed (if any such objections are filed) came on to be heard and proof of the due publication of notice of hearing of such petition having been made and filed, and after hearing all parties interested therein:

It is ordered, adjudged and decreed that the amount of taxes, interest, collection fee, and charges set down in the column headed 'Amount decreed against lands,' in the tax record of which such petition forms a part, are valid, and decree is made in favor of the State of Michigan therefor against each parcel of said land for the amount set down in said column opposite to such parcel. It is further ordered, adjudged and decreed that said several parcels of land, or such interest therein as may be necessary to satisfy the amount herein decreed against the same, shall be severally sold as the law directs. It is further ordered, adjudged and decreed that the several special orders made by this court, and entered on such tax record are made a part hereof, with the same effect as if herein entered."

If costs are adjudged against any person contesting a tax, the decree therefor shall be in proper form and execution awarded. The decree shall be signed by the judge and countersigned by the clerk. Immediately after the entry of such decree, the county clerk shall make a certified copy thereof, and annex the same to the tax record. He shall thereupon deliver such record to the county treasurer, in whose office the same shall remain, except as needed in the office of the county clerk. If from any cause the hearing on said petition is not had on the day fixed in the notice therefor, the same shall

stand continued from day to day during the term without the entry of any order of continuance, until disposed of, and if for any reason it shall be found impracticable to hear and determine the
28 objections to all of the taxes specified in such petition within the time herein fixed for that purpose, then and in that case the court shall, within the time herein named, make a final decree as to all taxes to which no objections have been filed, and also those to which objections have been filed, which the court has then heard and passed upon. Such decrees shall be signed and recorded as hereinbefore provided. The court shall proceed with the consideration of the remaining taxes embraced in such petition, and objections thereto, and as soon as practicable dispose of the same by one or more decrees and in such form as the court may determine, which shall be entered in the chancery record of decrees of such court, and the same shall describe the lands and specify the total amount of taxes, interest and charges on each parcel thereof. The county clerk shall immediately thereafter deliver to the county treasurer a certified copy of such decree, to be kept and used as hereinbefore provided. Such copy of decree shall be annexed to the tax record and shall thereby become a part thereof. If from any cause no decree shall be made on such petition as to the taxes therein named, or any part thereof, the Auditor General shall, as soon as practicable, file a new petition for decree and sale made as herein provided. In case a decree is given in favor of the validity of any disputed tax, and the person contesting its validity desires to appeal to the Supreme Court, he shall be allowed to do so on paying the amount of the decree to the county treasurer, within ten days after the date of such decree, who shall retain the same until the decision of the Supreme Court, and pay the same to the party interested if such tax is held invalid; if held valid, then such money shall be credited to the proper fund. By such payment the land in question shall be discharged from the lien of the tax. In case the decision is against the validity of any tax, either the county treasurer
29 or the Auditor General shall have a right to direct an appeal therefrom to the Supreme Court on behalf of the State, but there shall be no sale for the tax held invalid, until such decision has been reversed or modified by the Supreme Court. The proceedings where the validity of any tax is in dispute shall, where no other provision is made herein, follow the ordinary chancery practice, and the court may allow amendments as in other cases. Notice shall be given of all appeals to the Supreme Court and such appeal shall be claimed, entered and bond for costs given, within twenty days after the making and entering of the decree. When the appeal is taken in behalf of the State, no bond shall be required. The judge shall, at the request of either party and on due notice, settle in proper form a case containing as much of the record and proceedings

as may be necessary to the due understanding thereof by the Supreme Court, and if appeal shall be taken, such case shall be transmitted to such court. An appeal as to the tax on any parcel shall not delay or affect the proceedings for the sale of any land on which there has been no appeal.

OF SALE BY COUNTY TREASURER.

SEC. 70. On the first Monday of December the county treasurer shall commence the sale of the lands mentioned in the decree upon which the amount charged shall not have been paid, and shall continue the same from day to day, Sundays and legal holidays excepted, until so much of each parcel shall be sold as shall be sufficient to pay such amounts. Each parcel described in the decree shall be separately exposed for sale for the total taxes, interest and charges, and the sale shall be made to the person offering to buy for any given tax and paying the full amount charged against each parcel, and accepting a conveyance of the smallest undivided fee simple interest therein. No greater interest in any parcel shall be sold than is sufficient to pay the amount of the tax on which the same is sold. If no person will buy for any of said several taxes and pay the balance thereof and take a conveyance of less than the entire thereof, then the whole parcel shall be offered and sold. The sale shall be at the county seat, or at such convenient place as shall be selected by the county treasurer and shall be subject to the taxes assessed subsequent to taxes included in the decree for the year for which sale is made. The county treasurer may, in his discretion, require immediate payment of any person to whom any parcel of such land may be struck off, and in all cases where payment is not made within twenty-four hours after sale he shall declare the bid cancelled and sell the land again; and any person to whom any parcel of land shall be so struck off, neglecting for twenty-four hours after the close of such sale to pay to the county treasurer the amount of such bid, shall forfeit to the State five times the amount of such bid and costs of suit therefor, which amount may be recovered in the name of the people of the State of Michigan in an action of debt, in any court of competent jurisdiction, and it shall be the duty of the county treasurer and prosecuting attorney of the county to prosecute for all such delinquencies and penalties without unnecessary delay. Any subsequent bid of such person made at the sale may be disregarded by the treasurer. If any parcel of land cannot be sold for taxes, interest and charges, such parcel shall be passed over for the time being, and shall on the succeeding day, or before the close of the sale, be re-offered; and if on such second offer or during such sale, the same cannot be sold for the amount aforesaid, the county treasurer shall bid off the same

in the name of the State, for the State, county and township in proportion to the taxes, interest and charges due each. And in such case the county, township, school and other taxes assessed on the lands so bid off to the State, and the interest and charges thereon, shall remain a lien upon said lands, and any person or persons who shall afterwards purchase such lands of the State, as State tax lands, or otherwise, shall be liable for and pay all taxes then
31 remaining unpaid and assessed against such lands, together with the interest thereon at the rate of eight per cent per annum, and the charges, collection fee and cost of advertising, provided in section fifty-nine of this act, from the time said lands were returned delinquent for taxes until the time of such sale. The county treasurer shall enter in the proper columns of the tax record the interest in lands sold, the name and post-office address of each purchaser, opposite each parcel of land sold, and the word "State" opposite each parcel of land bid off in the name of the State. Certificates shall be given to each purchaser of the lands and interest bid off by him, showing the year and the tax for which he has purchased, and also the amount thereof, and of all other taxes paid by him at the time of such purchase, stating that he will be entitled to a deed after the period of redemption provided for in section seventy-four has expired, and that if the sale is not confirmed the money will be returned. As soon as possible after the conclusion of any sale, and within twenty days after the day named in the notice for the commencement thereof, the county treasurer shall make and file with the clerk of the court a report of such sale, therein referring to such tax record for the particulars thereof. All sales shall stand confirmed, subject to the right of redemption provided for in section seventy-four, unless objections thereto are filed within eight days after the time limited for filing such report, without the entry of an order or further notice.

The practice with reference to setting aside such sale shall be the same, so far as applicable, as in a sale in equity on the foreclosure of mortgages: *Provided,* No sale shall be set aside for inadequacy of price, except upon payment of amount bid upon such sale with interest and costs: *And provided further,* That no sale shall be set aside after confirmation, except in cases where the taxes were paid, or the property was exempt from taxation. In such cases the owner of such lands may move the court at any time within one year after he shall have notice of such sale, to set the same aside, and the court may so order upon such terms as may be just. As soon as
32 the sales are confined, the county treasurer shall make full reports of the same to the Auditor General, giving a description of the property sold, the amounts for which the same was sold, and the names of the purchasers, and thereupon the Auditor General shall, after the period of redemption provided in section seventy-

four has expired, execute deeds to the purchasers in such form as shall be determined by him. All lands bid off in the name of the State shall continue liable to be taxed in the same manner as if they were not the property of the State, except as hereinafter provided.

If from any cause the lands or any parcel thereof decreed for sale by the Auditor General shall not be sold as advertised, it shall be the duty of the Auditor General to cause sale to be made at such other time as he may fix for that purpose, of which notice shall be published at least four weeks prior to such day, and such notice shall contain a description of such lands and the amount claimed thereon, as hereinbefore provided in the first instance. The sale and all proceedings thereon shall be the same as if made on the first day fixed therefor: *Provided,* That if any parcel sold under the provisions of this section shall also be offered at the same sale as State tax lands, the purchaser must also at the same time become the purchaser from the State tax land list, and pay the taxes, interest and charges remaining unpaid thereon, and must pay all the remaining taxes assessed for the year for which he purchased, with interest thereon. All sales made in contravention of this requirement shall be void. The several county treasurers shall receive on such sale, only such funds as shall be receivable at the State treasury, and all moneys received at any tax sales that belong to the State shall be paid into the State treasury, on or before the first day of January next after the time of such sales, and the expenses of advertising and
33 sale shall be paid therefrom on the warrant of the Auditor General, and the remainder shall be placed to the credit of the general fund.

SEC. 74. Any person owning any of the lands sold as aforesaid, or any interest therein may, at any time within one year from and after such sale, redeem any parcel of such lands or any part or interest in such lands, by showing to the satisfaction of the county treasurer or Auditor General that he owns only that part or interest in the same which he proposes to redeem, by paying to the Auditor General or county treasurer the amount of the sale of the parcel of land, or the portion thereof wished to be redeemed, and interest thereon from the date of such sale. Upon the payment of the redemption money and interest thereon to the county treasurer aforesaid, he shall issue a redemption certificate in duplicate in such form as may be prescribed by the Auditor General, both of which certificates shall be countersigned by the county clerk, who shall make an entry of the number of such certificate, the amount for which given, the name of the person paying the same, one of which certificates shall be delivered to the person making such redemption payment, and the other shall be immediately transmitted to the Auditor General. The county treasurer shall also make a minute of such re-

demption certificate in the tax record book kept in his office, with the name of the payee, the date and amount paid. Such certificate, the duplicate and the entry thereof by the clerk or county treasurer, shall be evidence of such redemption payment in the courts of this State. In case any such lands are redeemed at the office of the Auditor General, a notice containing all of the above facts shall be sent to the county treasurer of the proper county, who shall cause the proper entries to be made on the tax record of his county and in the office of the county clerk.

LONGYEAR *v.* TOOLAN.

ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

No. 177. Argued March 13, 1908.—Decided April 6, 1908.

An owner of property must be held to knowledge that failure to pay duly assessed taxes will be followed by sale; and if the statute gives him full opportunity to be heard as to the assessment on definite days, and definitely fixes the time for payment and the time for sale in case of default, so that he cannot fail, if duly diligent, to learn of the pendency of the sale, he is not denied due process of law because the notice of sale is by publication and not by personal service; and the validity of a tax sale under the law of Michigan sustained.

144 Michigan, 55, affirmed.

THE facts are stated in the opinion.

Mr. Edward Cahill for plaintiff in error:

When notice by statute is relied on to supply the place of process it must contain the elements of notice and must be as definite and certain in all the essentials of notice as any other legal process. If a statute is deficient in respect to prescribing with certainty the time and place of hearing, the defect cannot be supplied by publication of the notice unless the statute also fixes definitely the time and place when and where the publication shall be made and so furnishes, by reference, a means of certainty. What is required is notice and notice to be of value must possess certainty or furnish the means of certainty to the person entitled to it. *State R. R. Tax cases*, 92 U. S. 575; *Davidson* v. *Board of Administration of New Orleans*, 97 U. S. 108; *Hager* v. *Reclamation District*, 111 U. S. 701; *C. N. O. & T. P. R. R. Co.* v. *Kentucky*, 115 U. S. 321; *Spencer* v. *Merchant*, 125 U. S. 345; *P. C. C. & St. L. Ry. Co.* v. *Backus*, 154 U. S. 421; *Winona Land Co.* v. *Minnesota*, 159 U. S. 526, substantially differ from the case at bar.

Mr. Harris E. Thomas, with whom *Mr. Charles W. Nichols* was on the brief, for defendants in error.

MR. JUSTICE MOODY delivered the opinion of the court.

This is a writ of error to the Supreme Court of Michigan. That court rendered judgment for the defendants in error, who were the original plaintiffs, against the plaintiff in error, who was the original defendant, in an action of ejectment to recover a certain lot of land. The defendant was at one time the owner of the land in dispute, but it was conveyed to the plaintiffs by a deed given in pursuance of a sale for taxes. The title to the land depends upon the validity of the tax title, which was upheld by the court below. The issue in this court is narrowed to the question whether the sale of the land for the enforcement and collection of the taxes, which it is conceded were duly levied, violated the due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

The method in Michigan of the assessment and collection of taxes on real property is as follows: On or before the third Monday in May the Supervisor of the township makes a tax roll, on which each parcel of real property is described, and the name of its owner, if known, set opposite. The Supervisor then estimates the true cash value of the property. On the Tuesday next following the third Monday of May the Supervisor submits his assessment roll to a board of review for correction and approval. On the fourth Monday of May and the day following the board sits, and, at the request of any taxpayer, has the power to correct the assessment on his property. The members of the board have authority to administer the oath and to examine witnesses. The assessment roll is then finally made up and certified. The Supervisor then proceeds to assess taxes in accordance with the assessment roll, and from the first day of December following they become a lien upon the property until payment. Act 206 of the Laws of 1893 provides for

the enforcement and collection of delinquent taxes by sale. All lands, the taxes upon which have remained unpaid for a year after the lands have been returned to the Auditor General or the county treasurers as delinquent, are declared to be subject to sale in satisfaction of the tax lien. The law provides, § 61, that "as soon as practicable after the first day of June . . . the Auditor General shall prepare and file in the office of the County Clerk . . . a petition addressed to the Circuit Court for said county in chancery, stating therein by apt reference to lists or schedules annexed thereto, a description of all lands in such county upon which taxes have remained unpaid for more than one year prior to . . . the first day of May of the year in which the petition is filed, and the total amount of such taxes. . . . Such petition shall pray a decree in favor of the State of Michigan against said land for the payment of the several amounts so specified therein, and in default thereof that such lands be sold." The petition is then entered in "a substantial record book," with a list of the lands and the taxes upon them. The Circuit Judge thereupon makes an order that the petition will be brought to hearing and decree at a time and place named, at which all persons interested who desire to contest the lien of the State may appear and file their objections, and that in default of appearance a decree as prayed for will be entered. The petition, with the order thereon, must then be published at least once a week for four weeks next prior to the time fixed for hearing, in some newspaper published and circulating in the county to be designated by the Auditor General. If there is no such newspaper, or none such can be secured, the petition and order must be printed and furnished to each voter in the county and copies posted in three public places in each township. The foregoing publication is declared by the law to be "equivalent to a personal service of notice on all persons who are interested in the lands specified in such petition, of the filing thereof, of all proceedings thereon and of the sale of the lands under the decree, and shall give the court jurisdiction"

to proceed to a decree. An appeal to the Supreme Court may be taken by either party. On the first Monday of December following the county treasurer begins to make the sales decreed by the court, must report them to the clerk of the court, and eight days after the sales are reported to the clerk of the court are given for objections to the sale, which may be set aside as in the practice in cases of sales in equity on the foreclosure of mortgages. The sale is then confirmed, subject to a right of redemption, which may be exercised at any time within one year from the sale. The sale, however, may be set aside within one year after the owner has notice of the sale, if the taxes have been paid or the property was exempt.

The sale in the case at bar was made after proceedings which, in all respects, conformed to the statute. The single objection made in behalf of the plaintiff in error is that the statute denies to him, then being a resident of the State, the due process of law required by the Constitution, in that it substitutes notice by publication of the proceedings for sale for personal service. It has been shown that the Michigan law provides a board of review, which holds sessions on days fixed by the law, where every person whose property is on the provisional assessment roll submitted by the Supervisor may be heard to correct the assessment. It would seem that this opportunity for hearing, coupled with the provision for setting aside the sale within one year after notice of it, which has been stated, satisfies the requirement of due process of law made by the Fourteenth Amendment, and that the State may be left to enforce the collection of the taxes as it chooses. But we pass this question without deciding it, simply observing that in *Winona & St. Peter Land Co.* v. *Minnesota*, 159 U. S. 526, it was said, p. 537, that the Fourteenth Amendment was not violated "if the owner has an opportunity to question the validity or the amount of it either before that amount is determined or in subsequent proceedings for its collection." If it be assumed that the delinquent taxpayer, who has already had an opportunity to be heard upon the assessment of the

tax upon his property, is entitled to further notice of the pendency of proceedings to sell the land in satisfaction of the tax lien, then the statute before us requires a sufficient notice. It is no objection that the notice was only by publication. In the case of *Leigh* v. *Green*, 193 U. S. 79, a case of publication, the authorities were reviewed, and it was said, p. 92: "Where the State seeks directly, or by authorization to others to sell land for taxes upon proceedings to enforce a lien for the payment thereof, it may proceed directly against the land within the jurisdiction of the Court, and a notice which permits all interested, who are 'so minded,' to ascertain that it is to be subjected to sale to answer for taxes, and to appear and be heard, whether to be found within the jurisdiction or not, is due process of law within the Fourteenth Amendment to the Constitution." Moreover, the case at bar cannot be distinguished from *Winona & St. Peter Land Co.* v. *Minnesota*, *supra*. There a statute similar to the one now before us was held to afford due process of law. The only distinction suggested is that the Minnesota statute fixed more definitely than the Michigan statute the time of filing the petition, of making the order for hearing, and of the hearing itself. But those times are fixed with sufficient certainty here. The owner of property whose taxes, duly assessed, have remained unpaid for more than one year must be held to the knowledge that proceedings for sale are liable to be begun as soon as practicable after the first day of June, and that the law contemplates that they will be ended before December 1, when the sales will be made by the county treasurer. The proceedings are inscribed on the public records and otherwise made notorious. If he exercises due vigilance, he cannot fail to learn of their pendency, and that full opportunity to defend is afforded to him. This satisfies the demands of due process of law, and the judgment is

Affirmed.